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UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1995

Addendum

Libyan Arab Jamahiriya*

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[29 November 1995]

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* For the initial report submitted by the Government of the Libyan Arab Jamahiriya, see CCPR/C/1/Add.3/Corr.1 and CCPR/C/1/Add.20; for its consideration by the Committee, see CCPR/C/SR.51 and Official Records of the General Assembly, thirty-third session, Supplement No. 40, (A/33/40), paras. 50-67. For the second periodic report submitted by the Libyan Arab Jamahiriya, see CCPR/C/28/Add.16 and Add.17; for its consideration by the Committee, see CCPR/C/SR.1275, SR.1276, SR.1376, and SR.1377 and Official Records of he General Assembly, fiftieth session, Supplement No. 40, (A/50/40), paras. 123 to 143.

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Introduction

1. The International Covenant on Civil and Political Rights places the States parties thereto under a number of obligations including, in particular, the obligation to take measures, in accordance with the legal and judicial procedures prevailing in their territory, to eliminate any incompatibility between the provisions of the Covenant and their domestic legislation.

2. The Jamahiriya has announced its accession to both the Covenant and the Optional Protocol thereto and, in fulfilment of its obligations under the Covenant, has already submitted an initial report followed by a supplementary report answering the questions raised by the Committee concerning the legal, administrative and judicial framework within which the provisions of the International Covenant on Civil and Political Rights could be put into effect and applied in Libya as one of the States parties thereto.

3. In the present report, we have endeavoured to give a clearer and more precise idea of Libyan legislation and of the framework that it provides for the application of the provisions of the Covenant. This necessitated a comparison between the provisions of the Covenant, article by article, and the corresponding domestic legislative texts in order to enable the Committee to familiarize itself with the legal framework within which the provisions of the Covenant are being applied and also in order to eliminate any confusion that might arise. In reply to the questions previously raised by members of the Committee, we have also endeavoured to give a brief account of the political system in the Jamahiriya, as well as the procedure for the promulgation of legislative instruments and the relationship between the judicial, legislative and executive authorities, in order to acquaint the Committee with the philosophy underlying the system of government in Libya and facilitate its understanding of the ways in which the legislature and the enactments that it promulgates have a bearing on the field with which we are dealing.

4. We believe that a careful reading of the report will show that the legal and judicial system in force in the Jamahiriya is consistent with the provisions of the Covenant and constitutes an appropriate basis for the application of its provisions from the standpoint of our legislation and judicial system and the provisions of the Covenant, which has become part of our domestic legislation and, as such, can be invoked before the Libyan courts in the field covered by its provisions.

5. Finally, we wish to affirm the Jamahiriya's desire to cooperate with the Committee in its field of competence in the same way as the Jamahiriya is diligently endeavouring to cooperate with similar Committees. God is the arbiter of good intentions.

I. GENERAL

A. Geographic and demographic features

1. Geographic location and characteristics

6. The Libyan Arab Jamahiriya is situated in central North Africa between latitudes 18°-23° N and longitudes 9°-25° E and, by virtue of its distinctive

geographic location, constitutes the northern gateway to the African continent. It is bounded on the north by the Mediterranean Sea, on the south by Chad and Niger, on the east by Egypt and the Sudan and on the west by Tunisia and Algeria. The Libyan coast extends for more than 1,950 km along the Mediterranean, thereby constituting the longest Afro-Arab coastline on the Mediterranean.

7. This distinctive location has endowed the Jamahiriya with special importance in bygone imperial ages and also in modern times, as a result of which its territory and coasts were the scene of conflicts between the ancient Phoenician (proto-Arab), Roman and Greek Empires. Libyan Arab territory was also the scene of interaction between successive civilizations in which the Arab element played a decisive role through the proto-Arab Phoenician civilization, the Punic civilization which was of ancient Arab origin, and the Islamic civilization, the monuments of which can still be found in many parts of our country.

2. The demographic structure

8. According to the estimates for 1990, the population of the Jamahiriya amounted to about 3,947,200 persons. In Libyan Arab society, women constitute about half the population. The available research and statistics and the results of the population censuses conducted during the last four decades show that the proportion of women increased from 48.0 per cent in 1954 to 48.5 per cent in 1992 and the proportion of women in relation to the population as a whole increased from 48.1 per cent to 48.9 per cent during the same period. Accordingly, the number of males per hundred females declined from 106 in 1973 to 104 in 1992 as shown by the results of the family expenditure survey. 1/

3. Ancient Arab migrations and their role in the structuring of the population

9. The territory of the Libyan Arab Jamahiriya forms part of the Arab world and its people form part of the Arab nation. Its language is Arabic, its religion is Islam and its people, who are of Arab origin, constitute a united and homogenous population group which was formed in Libyan territory, as in the case of the other North African countries, through ancient and subsequent Arab migrations that took place in three stages: ancient Arab migrations; migrations during the Arab-Islamic conquest; and migrations after the conquest, the oldest of which took place more than 10 centuries ago and originated in the east, specifically in the Arabian Peninsula and Yemen.

10. "Berber" is a term that some sources are in the habit of using without defining its meaning or its historical origins. In fact, as a component of the population of Libya and other North African countries (Tunisia, Algeria and Morocco), the "Berbers" are of ancient Arab origin.

11. "Berber" is a descriptive linguistic term that originated in the Greek and Roman civilizations, both of which used it, more or less in the same way, to designate persons (barbari) living outside the walls of Athens or Rome. The Romans also applied it to the population of North Africa (Libya, Tunisia, Algeria and Morocco) who resisted the Roman invasion and refused to recognize

the pagan deities which Rome attempted to impose on them by force. For example, according to St. Augustine, if one of the peasants living in the villages of the Middle Atlas were asked about his origin, he would reply "We are 'Shinaniun' (i.e. Canaanites or Phoenicians)", thereby confirming the local population's attachment to its historical roots, as well as its rejection of the Roman religion and the policy of Romanization which Rome was attempting to impose by force and which became a model for the policies of assimilation and cultural spoliation that were imposed on the peoples of the third world in subsequent ages.

12. The term "Berbers" has no racial or bio-physiological connotation reflecting distinctive linguistic or cultural characteristics that would justify its application to a population group inhabiting part of Libya and other North African countries.

13. The Jabal Nafusah area, in which the ancient Arabs settled in Libya, contains abundant demographic evidence which belies the allegations made in some reports submitted to your distinguished Committee by foreign sources, primarily in the United States of America, to the effect that the "Berbers" constitute a minority. In actual fact, they are of ancient Arab (Yemeni) origin and entered the country during the Arab migrations prior to the Arab-Islamic conquest, bringing with them their language, culture, lifestyles and livelihood-related occupations. They came into contact with the Phoenician Empire, the language, religion and culture of which they assimilated without resistance or conflict, and also with the Roman Empire, the presence of which they resisted as an invading force, rejecting its Latin language, its pagan deities and its subsequent Christian religion, preferring to worship the Carthaginian rather than the Roman deities, thereby providing a clear historical indication of the Arab Semitic origin of this population group.

14. Additional historical evidence can be found in the fact that the fortresses of Yadrug, Kinda, Nuh, al-Harith, Al-Mayyala, Ghillis and Shurus, as well as other landmarks in Jabal Nafusah, were actually built in the architectural style prevalent in the castles and fortifications of Yemeni cities. This is further corroborated by the social structure of the tribal components of that population group, since the Bal Harith, Sultan, Amru, al-Maqadima, Nuh, Beni Ma'in, Beni Lihyan, Jumrum, Mazghour and other tribes are actually branches of tribes with the same names and characteristics in Yemen and the Arabian Peninsula. The predominant mode of agriculture in those areas is the terraced mode prevailing in the towns and hills of Yemen. The dialect that the inhabitants of those areas speak, in addition to classical Arabic, is an ancient Arabic dialect that combines the features of classical and old Arabic and uses the same modes of expression characterized by purity of style and linguistic constructions, such as the use of consonants to denote feminine and masculine forms and the definite article in the same way as the ancient Himyaritic languages of Yemen. As noted by al-Hamdani in his book "Wasf Jazirat al-Arab" (Description of the Arabian Peninsula), the main feature of this dialect lay in its alternance of guttural and soft syllables.

15. Although the ethnic component of the ancient and more recent Arab migrations during those periods was Arab from the Arabian Peninsula, and particularly Yemen, the Arab Maghreb region was also a vast human melting-pot

with reverse migrations and intermixtures of negroid and ancient Arab ethnic groups in which geographical and climatic factors played a major role. The manifestations of this can still be seen in the demographic composition since, over the ages, there has been considerable racial, linguistic, religious and cultural interaction and intermixture between Libya and the other countries of the Arab Maghreb, on the one hand, and neighbouring African countries such as the Sudan, Niger, Mali, Chad and northern Nigeria on the other.

B. An outline of the political system, the legislative and executive mechanisms and the judicial authority in the Jamahiriya

16. The political system in the Socialist People's Libyan Arab Jamahiriya is based on direct popular democracy in which the masses play their political, economic and social role and take decisions concerning various aspects of public and private life.

17. The concept of direct popular democracy is based on the twin pillars of people's congresses and people's committees. The people's congresses embody the sovereign decision-making authority, since sovereignty belongs to the people who exercise it through the people's congresses. Executive authority is exercised by the people's committees. The people as a whole take decisions through the people's congresses. The people also elect the people's committees, which are the instruments responsible for implementation of the decisions taken by the people's congresses, to which they are answerable. The principle applied in the Jamahiri system (a system of direct popular democracy in which authority belongs to the people) is that the people's congresses take the decisions, which are implemented by the people's committees which are accountable to the congresses.

18. Under the concept of direct popular democracy, the effective exercise of authority means that the people controls itself. It also means that there is no intermediary between political reality, consisting in authority, and social reality, consisting in the masses of the people. At the basic people's congresses, the people take decisions on foreign policy, planning, the economy, education, health, defence, industry and justice and also promulgate legislation and elect a people's committee to implement the decisions taken in each of these fields. This is done in each of the 300 politico-administrative units which constitute "mini-States" that take decisions and promulgate and implement legislation through bodies elected by the population of their geographical area and consisting in their basic people's congresses. They have control over their resources, and experts from those mini-States carry out the planning and programming activities needed for the exploitation of their resources, and the implementation of their projects under the supervision of an agency the head of which is chosen directly by the people.

The legislative machinery

19. In keeping with this concept, legislative authority under the system of the people's authority is exercised by the basic people's congresses, which constitute the instrument by which laws are promulgated, amended or rescinded.

The basic people's congresses have undisputed authority to promulgate legislation, whenever needed, to regulate any aspect of public or private activity.

The mechanism of collective participation in legislation

20. Whenever legislation is needed to regulate a particular field of social life, the popular masses participating in the people's congresses raise and debate the issue on their own initiative. Their debates determine the broad outline and objectives of the legislation and a summary of their conclusions is then referred to the people's committee of the Secretariat for Justice which, through its competent department, draws up a bill of law for submission at the next regular session of the people's congresses, which debate the text of the bill, any part of which they may amend or reject. When the text of the bill has been finalized and approved by the congresses, it is submitted, together with their recommendations, to the General People's Congress which, acting as an expanded drafting committee, considers all the opinions and amendments of the people's congresses and then promulgates the bill, which enters into force on the date of its publication in the Official Gazette.

21. As an alternative procedure, the General People's Committee or the other secretariats, each within its particular field of jurisdiction, may submit a bill of law to the next session of the people's congresses, which discuss the bill and make any necessary amendments or reject it and send it back, with comments, to the competent people's committee so that it can be resubmitted to the congresses after any shortcomings have been rectified. In the event of the bill being approved, it is referred, together with any comments or amendments, to the General People's Congress. The latter, being the general forum in which the congresses, people's committees, trade unions and professional associations meet, acts as an expanded general drafting committee to finalize the bill, which enters into force, following its promulgation by the General People's Congress, on the date of its publication in the Official Gazette.

22. The mechanism of collective participation by the people in the promulgation of legislation is therefore a two-track process in which the people's congresses can either take the initiative or discuss bills of law submitted by the General People's Committee or the people's committees of the various secretariats. In both cases, this participation makes the people's congresses the sole legislative bodies in society. In actual fact, this is an expression of the sovereignty of the people, which is exercised through the people's congresses.

The executive authority

23. This comprises all the activities of government agencies in the system of the people's authority and consists of the Secretariats for Justice, Health, Foreign Affairs, Information, Planning, the Economy, the Treasury, Communications, Education, Petroleum, Defence, etc. These activities are undertaken by people's committees, appointed directly by the masses in the people's congresses, which implement the decisions of the people's congresses in each of the above-mentioned fields. The people's committees report directly to the congresses in accordance with the principle of people's

congresses, which take decisions, and people's committees, which implement those decisions and are themselves accountable to the congresses. This is the essence of direct popular democracy, as applied in Libya.

The judicial authority

24. This is exercised by the judicial machinery, consisting of the courts, the Department of Public Prosecutions and ancillary bodies staffed by criminal investigation officers.

25. The courts in Libya are of four types: civil courts, criminal courts, administrative courts and personal status courts (which apply Islamic law).

26. The Supreme Court, which is the highest judicial authority in the legal system, hears appeals brought before it in connection with civil, criminal, administrative and personal status judgements handed down by the highest courts of the four types. The judgements and rulings of the Supreme Court are binding on all the courts and administrative authorities in Libya. The new draft Constitution empowers the Supreme Court to rule on the constitutionality of legislation and on any other matters relating to the interpretation or elucidation of the Constitution.

The independence of the judiciary

27. Under the system of the people's authority, the members of the judiciary enjoy absolute immunity in the discharge of their duties, in accordance with the principle of the independence of the judiciary. As stipulated in article 28 of the Promotion of Freedom Act No. 19/20, judges are independent and, in the discharge of their duties, are subject to no authority other than that of the law. Article 80 of the draft Constitution contains a similar provision to the effect that judges are independent and, in their administration of justice, are subject to no authority other than that of the law and their consciences.

28. Judges are selected from among candidates holding university degrees in law, or in secular and Shari'a law in the case of the personal status courts. They are appointed by the General People's Committee for Justice which, by virtue of its composition, acts as a Council of the Judiciary. The Secretary of Justice, who heads the Committee, has no role or authority which could prejudice the independence of the judiciary or the functional performance of its members.

29. The Organization of the Judiciary Act confirms the principle of the independence of the members of the judiciary from the standpoint of appointment, promotion and remuneration. By virtue of the nature of the profession that they exercise, the legislature has taken care to ensure that these distinctive safeguards are totally different from the regulations governing ordinary civil servants in other governmental departments.

C. The legal framework for the application of the provisions of the International Covenant on Civil and Political Rights in the light of the Libyan legislation in force

30. This question is governed by the status of international instruments vis-à-vis the domestic legislation of the Jamahiriya and the compatibility of that domestic legislation with the provisions of the Covenant.

1. The status of international instruments vis-à-vis domestic legislation

31. Every international instrument to which the Jamahiriya accedes and which is ratified by the basic people's congresses and published in the Official Gazette becomes binding and enforceable by the country's judiciary, in the same way as domestic legislation, with effect from the date of its publication in the Official Gazette.

32. In accordance with this principle, the provisions of the International Covenant on Civil and Political Rights must be applied by the country's judiciary and any interested party has the right to invoke it and petition the Libyan judiciary to implement its provisions. The Libyan judiciary is under an obligation to respond to such a petition provided that the petition is substantiated on legal grounds. The interested party has the right to invoke the provisions of the Covenant at any level of the judicial hierarchy.

33. There is no inconsistency between the provisions of the Covenant in question and Libyan legislation such as the Great Green Document on Human Rights, the Promotion of Freedom Act, the Penal Code, the Code of Criminal Procedure, the Civil Code, the Civil Service Acts and the draft new Constitution the text of which allows ample scope for the implementation of the provisions of the Covenant, as we shall see from a comparative study of its provisions and those of the above-mentioned Libyan legislation. Any provision contained in the International Covenant on Civil and Political Rights for which there is no corresponding provision in Libyan legislation is binding on the country's judiciary, as already mentioned.

34. The relationship between the provisions of the Covenant and the domestic legal system in the Jamahiriya are governed by the following principles:

(a) Every international instrument to which the Jamahiriya accedes acquires binding force, as part of the country's domestic legislation, after it has been ratified and published in the Official Gazette.

(b) In the hypothetical event that a provision of an international instrument, such as the Covenant, were not reflected in a corresponding or equivalent legal provision in Libyan legislation, the provision of the said instrument would be applicable and binding on the country's judiciary, as already indicated.

(c) Any interested party has the right to invoke any or all of the provisions of such an instrument before the country's judiciary, which would be under an obligation to determine the admissibility of such a petition in

accordance with the rules of jurisdiction and within the framework of the discretionary power with which it is vested by law. This applies to the provisions of the International Covenant on Civil and Political Rights.

35. Human rights instruments enjoy special status in regard to the application of this principle. Accordingly, such international instruments become binding and enforceable without any need to incorporate their provisions or texts in a corresponding domestic legislative enactment.

36. In our opinion, incorporation of the provisions of the International Covenant on Civil and Political Rights in domestic legislation is necessary in the case of States in which domestic legislation prevails over the provisions of international instruments from the standpoint of their binding force and applicability by the judiciary of those States. However, this does not apply to Libya in view of the position that its legislature has adopted.

37. The above-mentioned principles stem directly from the status of international instruments vis-à-vis Libya's domestic legislation. This is the first aspect that determines the legal framework for the implementation of the provisions of the International Covenant on Civil and Political Rights in the Jamahiriya.

38. The second aspect lies in the extent to which domestic legislation is compatible with the provisions of the Covenant. As we shall see in the various sections of this report, that compatibility can be found in the Great Green Document on Human Rights, the draft Constitution, the Promotion of Freedom Act, the Penal Code, the Code of Criminal Procedure, the Civil Code, the Administrative Code and the Civil Service Acts, etc. Any person carrying out research in this field is aware of the fact that, on certain issues, domestic legislation might be in conflict with the provisions of the Covenant. This question, to which the Committee has given consideration in its comments on the guidelines that States must follow in their periodic reports on the human rights situation in their territory, will be dealt with in due course.

2. The structural composition of the International Covenant on Civil and Political Rights

39. The legal structure of the International Covenant on Civil and Political Rights consists in a preamble and 53 articles, to which must be added the provisions of the Optional Protocol, consisting of 14 articles. All of these provisions are binding on the States parties. In the light of its provisions, the legal structure of the Covenant can be divided into two parts. The first part comprises the series of articles that place the States parties under specific practical obligations which the said States must strictly respect in order to ensure that the provisions of the Covenant acquire binding force in their territory in accordance with the rules laid down in their domestic legislation and in the provisions of articles 48, 49 and 50 of the Covenant. The second part comprises the series of articles setting forth the general procedures concerning the activities, composition, membership, terms of reference and working methods of the Committee and its subsidiary bodies (the Conciliation Commission), as well as the term in office of their members and their relationship with the Secretary-General and the Economic and Social Council, etc.

40. Since the States parties have an obligation, under the terms of article 2 of the Covenant, to ensure compatibility between their domestic legislation and the provisions of the Covenant so that the latter can be applied to all individuals within their territory and subject to their jurisdiction, a comparative study of the provisions of the Covenant and those contained in the State's domestic legislation becomes necessary with regard to the first part of the provisions of the Covenant which, by their very nature, constitute the essence of the obligations which the State party must strictly respect. That is the approach that we shall adopt in the present report.

41. This practical methodology which we shall be applying when dealing with the provisions of the Covenant should not detract from the legal binding force of those provisions as a whole; its purpose is to provide an appropriate basis for a comparative study of the textual articles of the Covenant and the domestic legislation of the Jamahiriya as a State party thereto in such a way as to facilitate a comparative study of both the domestic legislation and the provisions of the Covenant in order to help to create a basis for their application on an equal footing and to supplement any shortcomings in domestic legislation by the provisions of the Covenant. In practice, this could be called "harmonization" of the texts of domestic legislation with the provisions of the International Covenant on Civil and Political Rights as an obligation incumbent on the State party under the terms of article 2 of the Covenant.

3. Detailed outline of the comparative study in accordance with the proposed methodology

(a) The provisions of the Covenant which place the States parties under specific practical obligations (general provisions)

42. These provisions of the Covenant include the articles in parts I, II and III, from article 1 to article 27.

43. Part I, for example, includes the most important provision of the Covenant, namely the right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development (paragraph 1) so that they may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit (paragraph 2). As we shall see, the right to self-determination places the State party under an obligation to uphold this principle and incorporate it in its domestic legislation. In practice, this obligation implies that the State party must put an end to all forms of protection, trusteeship, occupation or domination that impede realization of the right to self-determination by any people under its influence through any of the above-mentioned forms of subjection.

44. Under part II, article 2, each State party has an obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status. This principle is an affirmation that the sacrosanct nature of the human person should not be influenced by any of the above-mentioned considerations.

45. The main obligation in this part is that, where not already provided for by existing legislative or other measures, each State party to the Covenant must take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant (article 2, paragraph 2).

46. Part III, article 6, concerning the practical applications of the provisions of the Covenant, stipulates that every human being has the inherent right to life. This right must be protected by law and no one may be arbitrarily deprived of his life, etc. Article 7 of the Covenant stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, while article 8, paragraphs 1 and 2, prohibits slavery and servitude. Article 9, paragraphs 1, 2 and 3, stipulates that everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention. Provision is made for legal guarantees to safeguard the rights of individuals and prevent any violation or infringement thereof.

47. In this way, articles 1 to 27 place the States parties to the Covenant under an obligation to safeguard and protect the rights recognized in the Covenant and to harmonize their domestic legislation with its provisions in such a way as to ensure their application or eliminate any inconsistency between them and the said legislation.

(b) <u>The provisions concerning procedural arrangements</u>

48. Parts IV, V and VI of the International Covenant on Civil and Political Rights (articles 28-53) contain a series of provisions that are primarily of a procedural nature and concern the composition, membership and specific functions of the Committee (article 28), the manner of election of the members of the Committee and their term in office, with due regard for equitable geographical distribution of its members, as well as representation of the different forms of civilization and of the principal legal systems in the world (articles 29, 30, 31 and 32). Articles 36, 37 and 39 contain provisions concerning the Committee's administrative staff, the convening of its initial meeting, the person empowered to convene it and the quorum required for its meetings. Article 40 specifies the Committee's terms of reference in its dealings with the States parties to the Covenant, as well as the manner in which it should deal with the reports that they submit.

49. Article 41 refers to disputes that might arise between States parties to the Covenant and the manner in which they should be dealt with, while article 42 refers to the mechanism for the settlement of such disputes through the Conciliation Commission; it specifies the number of members of the Commission, the place at which it should meet and the obligations of the States parties in regard to that Commission. Article 45 of the Covenant places the Committee under an obligation to submit an annual report on its activities to the General Assembly of the United Nations through the Economic

and Social Council. In parts V and VI of the Covenant, article 48 deals with the accession of States to the Covenant, the procedure that must be followed in this regard and the date on which the accession becomes effective, while article 47 contains a binding provision reaffirming the principle set forth in article 1 of the Covenant concerning the right to self-determination; in fact, it strengthens this principle with a final provision stipulating that nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

50. In our view, parts I, II and III of the Covenant, comprising articles 1 to 27, should form the focal point of any study seeking to compare the provisions of the Covenant with those of the domestic legislation of the States parties, since those parts contain the practical obligations with which the States parties must comply and which they must incorporate in their domestic legislation with a view to eliminating any contradiction between their domestic legislation and the provisions of the Covenant that might prevent the implementation of the latter.

51. Concentration on the articles in the first three parts of the Covenant does not imply any fragmentation of the Covenant or any weakening of its binding force. As already indicated in the introduction to this report, from the legislative and judicial standpoints all the provisions of the Covenant are binding on the States parties thereto. The practical advantage of this methodology lies in the fact that, as we shall see, a comparison between the provisions of the Covenant and those of the domestic legislation in force in the Jamahiriya shows that the provisions of the Covenant are fully applicable in our legislation except in a limited number of cases in which the provisions of the Covenant might conflict with our domestic legislation. In our view, the provisions of the Covenant are applicable under the terms of our Libyan domestic legislation for two reasons.

(a) In practice, there is ample scope for the application of the articles of the Covenant for which corresponding articles or similar texts exist in Libyan legislation. Any shortcoming or omission that might be found in our domestic law or legislation would be supplemented by the provisions of the Covenant which, in such a case, would be binding on our country's judiciary. Any interested party has the right to invoke the provisions of the Covenant at any level of the judicial hierarchy.

(b) Following their ratification and publication in the Official Gazette, the provisions of the Covenant became part of our domestic legislation and, as already mentioned, thereby acquired binding force.

II. COMPARATIVE REVIEW OF THE PROVISIONS OF THE COVENANT AND THE CORRESPONDING PROVISIONS OF LIBYAN LEGISLATION

Article 1

52. From the text of article 1 it is difficult to understand the obligations of States parties and the relationship between its provisions and human rights at the domestic level. Nevertheless, we shall refer to what we believe to be the essence of these two aspects, based on the provisions of the Covenant and

the corresponding provisions of our national legislation. Article 1 of the Covenant could be said to place the States parties thereto under two types of obligations.

Obligations at the external level in relations with other peoples and States

53. The States parties must recognize, respect and promote the principle of the realization of the right of peoples to self-determination in conformity with the rules of international law, practice and conventions pertaining thereto. To that end, they should support peoples struggling to exercise the right to self-determination and independence. This also implies that the States parties have an obligation to incorporate this principle in their legislation as a general legal rule with which they must comply in their relations with other members of the international community.

54. Each State party should put an end to all forms of trusteeship, protection, mandate and occupation in respect of all or any part of the territory of others which it is subjecting to any of these types of domination, since the termination of these blatant forms of dependence and subjection is a necessary prelude to the realization of the right of peoples to self-determination. In the light of the provisions of article 1 of the Covenant, it can be said that the States parties have an obligation to refrain from interfering in the affairs of other States, since the use of direct or indirect political and economic pressure, propaganda campaigns and other means of psychological warfare against any people detracts from the right to self-determination of the people subjected to such circumstances. The States parties likewise have an obligation to refrain from engaging, under any pretext, in any unilateral or joint act that would deprive a people of its own means of subsistence by establishing a blockade, an embargo or a boycott, freezing assets or imposing economic sanctions, to which some States parties to the Covenant resort as an expedient which they attempt to cover with a veil of international legality in accordance with resolutions adopted by United Nations bodies, particularly the Security Council. These resolutions constitute blatant or implicit violations of the provisions of the Charter of the United Nations and the Covenant in question, since they impede the enjoyment of some of the rights recognized therein by interpreting the provisions of the Covenant in an arbitrary manner designed to further the political aims of particular States which enjoy permanent membership of the Security Council.

55. A study of the present international situation shows several examples in which the right of peoples to full enjoyment of self-determination is being denied, particularly by unlawfully depriving them of their own means of subsistence. A clear example of this can be found in the manner in which the Security Council, acting in accordance with the wishes of some of its members, adopted resolutions, in blatant violation of the Charter of the United Nations, under which the people of the Jamahiriya were subjected to a boycott, an air embargo and freezing of their assets.

At the domestic level

56. For peoples, self-determination undoubtedly constitutes a natural prelude to their enjoyment of their human rights, for the effective realization of which liberty is an indispensable requirement. This applies, in particular, to the situation of developing peoples. Exercise of the right to self-determination leads directly to the establishment of a State or a political system expressing the aspirations of the people. The Covenant is binding on States not only in their relations with other States but also in their relations with the individuals constituting their population. Accordingly, the existence of the State expressing a political system is a prerequisite for the implementation of the provisions of the Covenant and any activity in the field of domestic legislation or its application which guarantees, safeguards or protects the enjoyment of the rights and freedoms recognized in the Covenant promotes the principles of human rights and strengthens the values on which those principles are based. In this regard, we believe that the States parties have a twofold obligation not only to make every endeavour but also to achieve the desired result. However, if external or internal circumstances beyond the control of the authorities or their agents prevent the implementation of some of the provisions of the Covenant, the State should be regarded as a contracting party faced with a situation of force majeure which prevents it from fulfilling its obligation. We will examine this question in the light of a comparison between the provisions of the Covenant and the corresponding provisions of our domestic legislation.

The corresponding national legislative texts at the external and domestic levels

1. The preamble to the Declaration Establishing the People's Authority

57. The Libyan Arab people, meeting in the General People's Congress (comprising the people's congresses, the people's committees, the trade unions, federations and professional associations) which embodies the rule of the people over their territory in acknowledgement of the exclusive authority of the people, hereby declare their commitment to liberty and their willingness to defend it on their territory and anywhere in the world and to protect those who are being persecuted in their quest therefor.

2. Article 18 of the Great Green Document on Human Rights

58. "The members of the society of the Jamahiriya defend and uphold freedom anywhere in the world and assist those oppressed for freedom's sake. They encourage peoples to confront injustice, tyranny, exploitation and colonialism and call upon them to resist imperialism, racism and fascism, in accordance with the principle of the collective struggle of peoples against the enemies of freedom."

59. Article 16 of the Great Green Document further stipulates that: "The society of the Jamahiriya holds humanitarian standards and values sacred and aspires to a humane society without aggression, without wars, without

exploitation and without terrorism, a society in which no one is considered to be great or small. All nations and peoples have a right to exercise self-determination and establish their national identity ...".

3. Article 1 of the Promotion of Freedom Act

60. "The citizens of the Jamahiriya are free and equal in regard to their rights and obligations. Their rights are inviolable."

4. Article 2 of the same Act

61. "Every citizen has the right to exercise authority and self-determination at the people's congresses and the people's committees. He must not be deprived of the right to be a member thereof or of the right to choose their secretariats, provided that he meets the conditions for the exercise of those rights."

62. The endeavours of the Libyan legislature within the context of article 1 of the Covenant have produced texts which, as we will see, concern the Jamahiriya's external and domestic obligations. It can be said that the preamble to the Declaration Establishing the People's Authority and articles 16 and 18 of the Great Green Document define the Jamahiriya's commitment to the right to self-determination at the external level, while articles 1 and 2 of the Promotion of Freedom Act define its obligations at the domestic level.

63. A comparison between these legislative texts and the provisions of the Covenant shows that the preamble to the Declaration Establishing the People's Authority, which is a binding legislative text, concerns the form of the system of Government and its institutions. In that instrument, the Libyan Arab people declare their commitment to liberty and their willingness to defend it on their territory and anywhere in the world and to protect those who are being persecuted in their quest therefor. This is a commitment to show solidarity with other peoples and to support them in their demands to exercise the right to self-determination.

64. Article 18 of the Great Green Document on Human Rights contains an even clearer and more explicit definition of the nature of the Libyan people's commitment in regard to the right of peoples to self-determination. In fact, the Libyan people undertake to defend and uphold freedom anywhere in the world and to assist those who are being oppressed for freedom's sake. They encourage peoples to confront injustice, tyranny, exploitation and colonialism and call upon them to resist imperialism, racism and fascism, etc. In keeping with these legislative principles, the liberation of all peoples from the clutches of injustice, tyranny, exploitation, colonialism, racism and fascism is a necessary prelude to their exercise of the right to self-determination. These principles apply, in particular, to the situation of the developing peoples.

65. Article 16 of the Great Green Document contains a highly significant provision insofar as it affirms the right of peoples to self-determination as a necessary prelude to the establishment of a humane society without aggression, without wars, without exploitation and without terrorism, in which

all nations and peoples, whether large or small, have the right to exercise self-determination and establish their national identity. These provisions reflect the external obligation of the Jamahiriya, as a State party to the Covenant, to uphold the principle of the right to self-determination and to incorporate this principle in its domestic legislation. If we also take into account the binding force that the Covenant acquired after its ratification and publication in the Official Gazette, any shortcoming in any domestic legislative text would be supplemented by the provisions of the Covenant in view of the binding force that it acquired as part of the domestic legislation applied in the Jamahiriya.

66. The right of peoples to self-determination, their right to control their natural resources and their right to choose the method of development best suited to their political, economic, social and cultural circumstances are among the most important principles in which the Jamahiriya believes and which it defends as an obligation expressing the philosophy which guides its ruling institutions and is incorporated in its legislation. These principles govern its relations with other peoples and with its own citizens.

67. Concerning the application of these principles at the domestic level, article 1 of the Promotion of Freedom Act stipulates that citizens are free and equal in regard to their rights, which are inviolable. This guarantee of the freedom and equality of individuals and the prohibition of any infringement of their rights, as set forth in article 1 of the above-mentioned Act, constitute the best safeguard for the rights recognized in the International Covenant on Civil and Political Rights which, having been incorporated in our domestic legislation, is binding on the Libyan State and its institutions in their relations with their citizens.

68. Article 2 of the same Act speaks of the exercise by individuals of the right to self-determination ("Every citizen has the right to exercise authority and self-determination ..."). These principles are further emphasized by the provisions contained in articles 7 and 8 of the draft Constitution. 2/

69. In actual practice, the provisions of article 1 are implemented at the domestic level through participation by Libyan citizens in the management of their affairs, in the joint formulation of the decisions affecting their lives and in the choice of the persons who implement those decisions. These principles are even more firmly embodied in the overall economic and social rights and other safeguards concerning their daily lives, such as the right to free medical treatment and education and the right to social security. Society assumes responsibility for the maintenance of persons without guardians by guaranteeing a basic income for every individual and family without a provider. Through the application of the system of participation, as a process that regulates economic activity by combining the production factors of human endeavour, machines and capital, the status of the worker is transformed from that of a hireling to that of a partner in production in order to free human needs from monopolization by a minority and to free the individual worker from wage slavery.

Article 2

The corresponding legislative texts

70. Article 17 of the Great Green Document on Human Rights stipulates that: "The members of the society of the Jamahiriya reject any discrimination between human beings on grounds of their colour, sex, religion or culture".

71. Article 13 of the draft Constitution further stipulates that: "Citizens are equal before the law, without any distinction between them on grounds of sex, origin, language, religion, belief or opinion".

72. The preamble to the Promotion of Freedom Act No. 20/1991 reads as follows: "Having considered the Great Green Document on Human Rights and the international covenants and instruments concerning human rights and fundamental freedoms ... etc.".

73. A comparison between the provisions of the Covenant and the provisions of our domestic legislation lead us to the following conclusions:

(a) The Jamahiriya is a State party to the International Covenant and has announced its accession to the Optional Protocol thereto. Accordingly, it is bound by the provisions of the Covenant and, in particular, has an obligation to respect and give effect to the rights recognized therein except in the case of controversial matters to which reference will be made in due course.

(b) Following its ratification and publication in the Official Gazette, the International Covenant became part of the legislation in force in the Jamahiriya and, as such, is enforceable by the judiciary and other administrative bodies. The beneficiary of any right based on legitimate interest or legal title can uphold and invoke it at any level of the judicial hierarchy.

(c) The corresponding legislative provisions that we have quoted are not as detailed or wide-ranging as those set forth in article 2, paragraph 1, of the Covenant. Article 17 of the Great Green Document on Human Rights in the Age of the Masses rejects any discrimination between human beings on grounds of their colour, sex, religion or culture, while article 13 of the draft Constitution 3/ also has probative value insofar as it contains a similar provision recognizing the equality of all citizens before the law, without distinction between them on grounds of sex, origin, language, religion, belief or opinion. In our view, these provisions of our domestic legislation are consistent with the tenor of article 2, paragraph 1, of the Covenant, any shortcoming that might be found in our domestic legislation being supplemented by the provisions of the Covenant which are enforceable in Libya in the same way as any of our domestic legislation.

74. In this connection, we wish to add an important point, namely that the preamble to the Promotion of Freedom Act No. 20/1991 stipulates that the sources from which the Act derives its binding force include the covenants and instruments concerning human rights and fundamental freedoms. In this context, the Libyan legislature is referring to the provisions of the

International Covenant and other covenants and instruments to which the Jamahiriya is a party.

75. In the light of the Committee's comments on the text of article 2 of the Covenant, the principal provisions contained therein concern two issues with which we will deal below.

Judicial remedy

76. Article 30 of the Promotion of Freedom Act stipulates:

> "Everyone has the right to petition a court, in accordance with the law. The court shall provide him with all the necessary safeguards, including legal counsel, and the applicant is entitled to avail himself, at his own expense, of the services of a lawyer of his own choosing."

77. With regard to the filing of a criminal complaint and the institution of criminal proceedings, article 3 of the Code of Criminal Procedure stipulates:

> "Criminal proceedings can be brought only on the basis of a complaint submitted by the aggrieved party or his representative to the Department of Public Prosecutions, or to a criminal investigation officer, in the case of offences in which the Penal Code requires a complaint from the aggrieved party before the offender can be questioned."

78. Article 30 of the Promotion of Freedom Act explicitly recognizes every person's right to institute proceedings, in other words to seek judicial remedy. In the light of this provision, it can therefore be said that a foreigner is also entitled to seek judicial remedy on the basis of the right recognized in that article, which also places the court under an obligation to provide the safeguards needed to ensure the enjoyment of that right through, inter alia, the appointment of a lawyer if the petitioner is unable to institute proceedings through a lawyer of his own choosing.

79. Under article 3 of the Code of Criminal Procedure, the aggrieved party must file a complaint, in person or through his representative, with the Department of Public Prosecutions or a criminal investigation officer in order to enable the Department of Public Prosecutions to investigate the complaint. This means that the Code makes special provision for individuals to exercise their right to file a complaint in respect of any detrimental act committed against them by a public official or a private individual.

80. Both of those texts make provision for judicial remedy by recognizing the right to file a complaint and petition the courts. Accordingly, they constitute an adequate guarantee of the right to institute legal proceedings from the stage of investigation by the Department of Public Prosecutions, which actually brings the legal action, to the stage at which the action is heard and adjudicated by the competent court. The rule is that every final judgement becomes enforceable and binding when it has passed through all the requisite judicial levels and all the channels of appeal have been exhausted.

81. The guarantees provided by Libyan legislation in regard to judicial remedy for the complainant or plaintiff in the most serious cases include the right to claim civil damages. He may indicate his desire to make such a claim when filing the complaint with the criminal investigation officer, the Department of Prosecutions or the examining magistrate and, to that end, may bring a criminal or an independent civil action before the courts.

82. We can therefore conclude that judicial remedies in respect of violations of the rights recognized in the Covenant are provided for under the general terms of Libyan legislation, which allow individuals ample scope to exercise the right to file complaints and petition the courts, particularly in cases involving human rights.

The legal status of foreigners in the light of Libyan legislation and the provisions of the Covenant

83. As in all other countries of the world, the entry of foreigners into Libya is regulated by law, which specifies the circumstances in which a foreigner is obliged to obtain a valid visa on a valid passport or similar document permitting him to return to his country of origin. Act No. 6/1976 specifies the types and purposes of visas. Articles 2 and 5 of that Act, concerning the entry, residence and departure of foreigners, makes provision for the issue of residence and work permits to persons employed under contract. Article 8 of the Act defines the obligations of foreigners who have been issued with visas to enter and reside in Libyan territory. The most important of these obligations are as follows:

(a) They must respect the laws and regulations in force in the Libyan Arab Jamahiriya.

(b) They must register with the nearest passport office within one week from their date of entry and must provide details concerning themselves and the members of their family who were granted entry visas.

(c) They must provide the details required of them within the specified time limits and must report the loss, destruction or expiry of their travel documents.

84. Under the terms of article 11 of Act No. 6/1976, a foreigner who has been permitted to enter and reside in Libya for a specified purpose is not allowed to do so for any other purpose without permission from the Director of the Passport and Nationality Department or the latter's authorized representative.

Circumstances in which residence permits issued to foreigners can be withdrawn and in which foreigners can be expelled

(a) Withdrawal

85. Under article 16 of Act No. 6/1976, a residence permit issued to a foreigner may be withdrawn, at any time, in the following circumstances:

If his presence threatens the internal or external security or integrity of the State or its economy, public health or public morals or if he is a burden on the State;

If he is convicted on a felony or a misdemeanour prejudicial to honour, trustworthiness or public security;

If he violates the conditions imposed on him at the time of issue of the permit;

If the reason for which the permit was issued to him no longer applies.

(b) Expulsion

86. Article 17 stipulates that a foreigner may be expelled in the following circumstances:

If he entered the country without a valid visa;

If he refuses to leave the country on the expiration of his residence permit which the competent authority has refused to extend;

If his residence permit is withdrawn for any of the reasons specified in article 16 of this Act;

If a court of law orders his expulsion.

In the first three of those cases, expulsion is effected on the basis of a substantiated decision by the Director-General of Passports and Nationality.

87. Under article 18, the residence permit of a foreigner who is to be expelled may be extended or he may be detained until the arrangements for his expulsion have been completed.

88. In the light of the above-mentioned texts, it can be said that the entry of a foreigner into Libya, his departure therefrom and his residence therein for purposes of employment under the terms of a contract concluded with the Libyan State or with one of its institutions or a foreign company are permitted on the basis of a contractual obligation in the Jamahiriya. From the legislative standpoint, the circumstances in which a residence permit may be withdrawn and in which a foreigner may be expelled from the Jamahiriya do not differ from those applicable in other countries of the world since, as a matter of principle, it is the State that decides who is permitted to enter its territory. In the cases of expulsion provided for in paragraphs 1, 2 and 3 of article 17 of Act No. 6/1976, it is only natural that the substantiated expulsion decision should be taken by the Director of Passports and Nationality since this allows scope for an objection procedure if there are valid reasons therefor.

89. In cases in which expulsion is permitted by law, the foreigner cannot be deprived of the safeguards provided for in article 13 of the Covenant. This aspect will be discussed below in order to avoid repetition.

90. In this connection, it should be noted that, in cases other than those in which a foreigner legally enters, resides in, leaves or passes through Libyan territory on the basis of a visa, his presence in Libyan territory is regarded as infiltration and illegal entry and he is subject to the procedures provided for in the Act. The cases that we have mentioned concern foreigners who enter Libyan territory legally, since it is this which gives them legal status that can be defended.

Article 3

The corresponding national legislative texts

91. First of all, it should be pointed out that the Libyan legislature uses the term "citizen" in a generic sense applicable to both males and females in the same way as Islamic jurisprudence uses the term "spouse" which, unless otherwise indicated, refers to both the male and female spouses. For purposes of comparison, the following legislative texts dealing with the subject of article 3 of the Covenant can be quoted.

92. Article 21 of the Great Green Document on Human Rights stipulates that: "All members of the society of the Jamahiriya, whether men or women, are equal in all human respects. Discrimination between men and women in regard to their rights is a flagrant inequity that cannot be justified".

93. Article 1 of the Promotion of Freedom Act No. 20 of 1991 further stipulates that: "All citizens of the Jamahiriya, whether male or female, are free and equal in regard to their rights, which are inviolable".

94. Article 7 of the draft Constitution reaffirms this right by stipulating that: "Citizens are free and equal in regard to their rights and obligations. Their basic rights and freedoms must not be infringed and any steps or measures incompatible therewith shall be null and void".

95. The rights recognized in article 3 of the Covenant would be binding and enforceable even in the absence of the texts that we have quoted and which provide for equality between men and women in regard to their rights and obligations, since the provisions of the Covenant became part of our domestic legislation by virtue of our country's accession to the Covenant and the Optional Protocol thereto, which were ratified and published in the Official Gazette as a legislative measure taken by the Jamahiriya in its capacity as a State party thereto.

96. We wish to re-emphasize that, in the preamble to the Promotion of Freedom Act, international covenants and instruments concerning human rights and fundamental freedoms are designated as binding sources. Furthermore, if we bear in mind the Libyan legislature's emphatic prohibition of discrimination between citizens on grounds of sex, which could be used as a pretext for recognition of an unjust principle detrimental to the rights of women which the legislature describes as "a flagrant inequity that cannot be justified", we find that the aim of the legislature in the Jamahiriya is consistent with the provisions of the Covenant in regard to the need to ensure and protect the equal rights of men and women.

The Libyan legislature's endeavours to promote and strengthen the legal and social status of women

97. The development endeavours of the Jamahiriya are based primarily on the liberation of people, land and resources. In this regard, women have benefited from legislative endeavours that have provided them with an opportunity for emancipation within the framework of the values, culture and traditions of Libyan society, which is an Arab Islamic society that believes in its time-honoured heritage as well as the need for modernization. Its social, political and cultural transformation endeavours stem from the concept of Islam as a positive, effective and influential factor that strengthens the beneficial aspects of the process of transformation and ensures human freedom. The Holy Qur'an addresses mankind in a comprehensive and purely objective manner: "People! We have created you from a male and female and divided you into nations and tribes so that you might have knowledge one of another. The noblest of you in the sight of God is the most pious".

98. The criterion of distinction in this address is piety and not sex, race, colour, ancestry, wealth or rank. All people, both men and women, are addressed and, since they enjoy equality as human beings, biological differences cannot be taken as a pretext to justify differences in living and working conditions, which would signify inequality. In keeping with this concept, legislation has been promulgated concerning the legal and social status of women. This legislation includes, in particular:

Act No. 10 of 1984, concerning the general conditions and effects of marriage and divorce;

Act No. 22 of 1991, amending some of the provisions of Act No. 10 of 1984.

99. In the social field, Libyan legislation has abolished the concept of marital insubordination under which the husband enjoys arbitrary power to compel his wife to return obediently to the conjugal home even if their cohabitation as a married couple has become impossible.

100. Restrictions have been placed on the husband's right to divorce his wife whenever and however he wishes. Divorce is no longer an absolute right that the husband can use as a weapon against his wife; it is a right that is subject to judicial control insofar as divorce is pronounced by the courts and not unilaterally by the husband. The wife is free to express her views and defend her rights on an equal footing and the judge has discretionary power to grant a divorce when all attempts to mediate and reconcile the spouses have proved futile. Restrictions have also been placed on polygamy, which is no longer an absolute right that the husband can exercise at will. The restrictions that have been imposed in this regard are of two types:

The wife's consent thereto, given without deception, duplicity or threat, must be witnessed in her presence;

The need to take a second wife must be substantiated on valid health or social grounds, such as illness or barrenness, etc.

101. If the second marriage is contracted without the consent of the first wife, it is deemed null and void and must be annulled. In such a case, the first wife is entitled to compensation in respect of any detriment suffered. In law, as formulated by the legislature in conformity with the provisions of the Shari'a, polygamy is a concession and not a right.

Access to public office

102. The right to work is recognized in article 11 of the Great Green Document on Human Rights which stipulates that "work is an obligation and a right for every individual within the limits of his abilities, either alone or in association with others, and everyone has the right to choose the type of work that suits him". Article 28 of the Promotion of Freedom Act further stipulates that "women have the right to engage in suitable work and must not be placed in a situation in which they are compelled to perform work to which, by virtue of their nature, they are not suited".

103. According to article 2 of the Promotion of Freedom Act: "Every citizen has the right to exercise authority and self-determination in the people's congresses and the people's committees. No citizen may be denied the right to membership thereof or the right to elect their secretariats, provided that he or she meets the requisite conditions".

104. According to article 1 of Act No. 8 of 1989, concerning the right of women to serve in the judiciary: "Women have the right to serve in the judiciary, the Department of Public Prosecutions and the Legal Administration Department on the same terms and conditions as men".

105. The above texts clearly show that the legislature has deliberately promulgated special legislative provisions recognizing the right of women to choose the type of work that suits them (article 28 of the Promotion of Freedom Act). The same applies to article 1 of Act No. 8 of 1989, which recognizes the right of women to serve in the judiciary, the Department of Public Prosecutions and the Legal Administration Department on the same terms and conditions as men. From these two provisions, we note the following:

(a) The legislature places women on an equal footing with men in regard to service in the judiciary and the Department of Public Prosecutions, as required by article 3 of the Covenant.

(b) The legislature has confirmed the right of women to choose the type of work that suits them and stipulates that they must not be placed in a difficult situation in which they would be compelled to choose work to which they are not suited or which might give rise to suspicion of arbitrary discrimination on grounds of sex.

106. Furthermore, in article 11 of the Great Green Document, the legislature uses general terms, not based on gender, when it recognizes that work is an obligation and a right for every individual within the limits of his abilities, either alone or in association with others. This applies equally to both men and women.

107. Article 1 of the Promotion of Freedom Act addresses citizens in general, both men and women, without specifying their sex. Hence, both have the right of access to public office, consisting in membership of the secretariats of the people's committees and the people's congresses, and both have the right to be selected for any post therein provided that they meet the requisite conditions.

108. Libyan Arab women are not discriminated against in the field of employment. They work as university professors, medical practitioners, researchers, ambassadors, officers in the people's armed forces and pilots of military and civil aircraft. The availability of employment opportunities for women in these fields illustrates the diligent manner in which the legislature has kept pace with the climate of social change in which Libyan women are living. As we have seen, the legislature has recognized their right to serve in the judiciary, the Department of Public Prosecutions and other posts on the same terms and conditions as men, with whom they are also on an equal footing in regard to employment as lawyers and legal advisers.

109. In addition, women enjoy a distinctive economic status insofar as they retain their financial independence, which is not extinguished or diminished on marriage. In keeping with the provisions of the Islamic Shari'a, the legislature recognizes their competence to conclude deeds of sale, purchase and gift and to dispose of their property in all development and investment-related fields.

Article 4

110. The restrictions imposed by article 4, paragraph 2, concern the obligation of States parties to ensure legal protection of the right to life during an officially proclaimed state of emergency and to refrain from putting death sentences into effect except in the most serious cases (article 6, paragraphs 1 and 2 of the Covenant). They also concern the obligation not to subject anyone to torture or cruel, inhuman or degrading treatment or punishment, or to medical or scientific experimentation without his consent (article 7, paragraphs 1 and 2 of the Covenant), and not to derogate from the inadmissibility of holding anyone in slavery or servitude.

111. The main aim of article 4 of the Covenant is to ensure that, in time of emergency, States parties do not take any steps or measures that would be detrimental to the lives or freedoms of individuals or which would involve discrimination on grounds of race, colour, sex, language or social origin. This necessarily applies to the obligation to protect and safeguard the rights recognized in articles 11, 15, 16 and 18 of the Covenant.

The corresponding legislative provisions

112. The Emergency Act of 1958 contains provisions that permit the executive authority to take the following measures:

(a) The issue or validity of permits for firearms may be totally or partially suspended and any type of weapons or explosives may be collected and placed under official control or sequestration on a temporary basis.

(b) Public gatherings may be subjected to prior authorization from the competent authority.

(c) Newspapers and publications may be prohibited from containing material likely to lead to an aggravation or deterioration of the situation that necessitated the proclamation of the state of emergency and any newspapers that publish such material may be seized.

(d) Postal, telegraphic and telephone communications may be subjected to censorship.

(e) The opening and closing times of public premises may be determined by decree and restrictions may be placed on freedom of movement at certain times.

(f) Means of transport and supplies may be requisitioned, and individuals may be required to render essential services, whenever such action is deemed necessary and provided that fair compensation is paid.

(g) Persons who manifestly pose a threat to public security may be restricted in their freedom of movement for a maximum period of one month and, if necessary, may be transferred to other locations within the borders of the State.

113. A comparative study of article 4 of the Emergency Act and article 4 of the Covenant shows that the executive authority is bound by the limits laid down by law (which depend on the circumstances of each individual case). The steps and measures that can be taken during a state of emergency, such as censorship and seizure of newspapers, transfer of persons who pose a threat to public security to other locations for a maximum period of one month and requiring individuals to render essential services in return for fair compensation, are not of a permanent nature.

114. In all such cases, the restrictions laid down in article 4, paragraphs 1 and 2, articles 6, 7 and 8, paragraphs 1 and 2, and articles 15, 16 and 18 are binding and must be respected by the States parties to the Covenant. In this connection, we wish to add that the legislative provisions that we have already quoted from the Promotion of Freedom Act, the Great Green Document on Human Rights and the draft Constitution, which have probative value in regard to the inadmissibility of discrimination between human beings on grounds of colour, sex, religion, belief or social origin, are binding in this field. Moreover, the Jamahiriya is a party to the Convention against Torture, the provisions of which it is obliged to apply, without any discrimination, in its relations with its citizens and foreign nationals.

115. It should be noted, however, that the findings of such a comparative study are of a hypothetical nature, since no state of emergency has been proclaimed in the Jamahiriya since the date of its accession to the Covenant and the Optional Protocol thereto. In fact, since the revolution of 1 September 1969, there has been no reason to subject Libya to a state of emergency. Libya has been faced with such a situation only on two occasions,

in 1956 when Egypt was subjected to the tripartite aggression by France, Great Britain and Israel and on 5 June 1967 when Egypt was again subjected to Israeli aggression.

Article 5

116. Article 5 contains two main provisions. Paragraph 1 stipulates that nothing in the Covenant may be interpreted in such a way as to grant any State, group or person the right to engage in any activity or perform any act that would destroy the rights recognized in the Covenant. The Committee's comments in this regard accord precedence to the provisions of the Covenant over any domestic legislation in force. We believe that this is a matter that cannot fail to give rise to questions concerning conflict between domestic legislation and the provisions of the Covenant.

117. Paragraph 2 seeks to provide wider scope and more extensive guarantees for rights and freedoms. It prohibits any restriction upon or derogation from any of the human rights recognized in any country but which the Covenant does not mention or which it recognizes to a lesser extent. In this regard, the Covenant seeks to affirm the rights that are already recognized under other legislation while, at the same time, expanding the scope of application of the provisions of the Covenant. Hence, the Covenant implicitly gives retroactive effect to its provisions. However, given the existence of religious and cultural diversity, potential areas of conflict will remain and, in such cases, the principles embodied in the Covenant will enjoy high status as an authoritative source. In our view, the question in this respect is one of mutual interaction between domestic legislation, with all its particularities and elements constituting the rule of law, and international conventions which, as a binding source of law, are governed by the common values of the international community which are evolving and developing with a certain amount of difficulty.

Article 6

The corresponding provisions of Libyan legislation

118. Article 8 of the Great Green Document on Human Rights stipulates that:

> "The members of the society of the Jamahiriya venerate and protect human life. The aim of the society of the Jamahiriya is to abolish capital punishment and, until such time as this is achieved, the death penalty shall apply only to those whose lives threaten or undermine society. A person sentenced to capital punishment has the right to request that his sentence be commuted or that he be allowed to make amends in return for the sparing of his life ...".

The court is empowered to commute the penalty, provided that such commutation is neither detrimental to society nor incompatible with humanitarian feelings. Repugnant methods of execution, such as injections, the electric chair and toxic gas, are condemned on moral grounds.

119. Article 16 of the same Document stipulates that the society of the Jamahiriya holds humanitarian standards and values sacred and aspires to a

humane society without aggression, without wars, without exploitation and without terrorism ... a society in which all nations, peoples and ethnic groups have the right to live in freedom in the manner that they choose, as well as the right to exercise self-determination and establish their national identity.

120. Article 4 of the Promotion of Freedom Act further stipulates that everyone has an inherent right to life and the death penalty must not be imposed except by way of retribution or on a person whose life endangers or corrupts society.

121. Article 6 of the said Act contains a provision that strengthens the previous provisions by stipulating that everyone has a right to security of person and it is prohibited to conduct scientific experiments on the body of any living person without his voluntary consent.

122. According to article 436 of the Code of Criminal Procedure: "The death penalty cannot be carried out on a pregnant woman until two months after her delivery".

123. According to article 81 of the Penal Code: "A young person over 14 but under 18 years of age who knowingly and willfully commits an offence is answerable therefor". If a young person who is answerable for his acts commits a felony punishable by death or life imprisonment, these two penalties are commuted to a term of not less than five years' imprisonment, which the convicted young person must serve at a place reserved for juveniles bearing criminal responsibility for their acts.

124. On the subject of the mitigation or commutation of penalties, article 29 of the said Code stipulates that: "if the circumstances of the offence warrant leniency, the judge may mitigate or commute the penalty in the following manner:

(i) Life imprisonment instead of capital punishment ...".

125. A comparative review of the above legislative texts and the provisions contained in article 6 of the Covenant enable us to reach the following conclusions:

(a) The society of the Jamahiriya protects life, which it holds sacred. This commitment to preserve the sacrosanct nature of life necessarily implies that everyone has an inherent right to life and that the society of the Jamahiriya has an obligation to promulgate laws and legislation that protect and safeguard life.

(b) The society of the Jamahiriya is aiming to abolish the death penalty. This signifies an intention to continue promoting the legislative implementation of the people's wish to achieve the desired aim of ensuring the sanctification and protection of life through the abolition of the death penalty.

(c) The death penalty is imposed only on persons whose lives endanger or corrupt society.

(d) Convicted persons have the right to request mitigation of their sentence or permission to make amends in return for sparing their lives.

126. These principles, which are recognized in article 8 of the Great Green Document on Human Rights, are further strengthened by articles 4 and 6 of the Promotion of Freedom Act, which was formulated in such a way as to define the principles set forth in the primary source (the Great Green Document). In fact, article 4 of the Act stipulates that: "Everyone has an inherent right to life and the death penalty must not be imposed except by way of retribution or on a person whose life endangers or corrupts society". Article 6 of the same Act further stipulates that: "Everyone has a right to security of person ...".

127. The wording used ("everyone has an inherent right to life") is a highly developed concept that expresses the Libyan legislature's desire to recognize and protect the right to life in a manner consistent with the provisions of the Covenant. It also severely restricts the imposition of the death penalty to cases in which it can be imposed by way of retribution or on a convicted person whose life endangers or corrupts society.

128. Death sentences are obviously imposed only in respect of acts committed while the legislation under which they are punishable by death is in force in order to ensure that penal codes are not applied retroactively. It is also only natural that such sentences should be handed down by a competent criminal court and carried out only after all channels of appeal at the various judicial levels have been exhausted. The prevailing principle in the Libyan Penal Code is that there is no crime or punishment except as defined by law (article 1) and offences are punishable in accordance with the law in force at the time of their commission (article 2, paragraph 1 of the Penal Code).

129. The aforementioned Libyan legislative texts contain provisions concerning general amnesty, special pardon and commutation of penalty. General amnesties are promulgated by the authority empowered to do so which, under the terms of Libyan law, is the General People's Congress. Special pardons are issued by the same competent authority in respect of a particular type of offence. They are also issued in respect of death penalties handed down by way of retribution if the victim's next of kin, in return for payment of blood-money or for any other reason, renounces his right to retribution, such renunciation being equivalent to commutation of the penalty. In this way, the scope of application of death sentences is restricted in a manner that is consistent with the provisions of the Covenant and also with the general trend in Libyan legislation, in which the aim is to abolish the death penalty, since capital punishment cannot be inflicted in cases in which the next of kin renounces his right to retribution in return for payment of blood-money or for any other reason.

130. The provisions contained in articles 16, 23 and 24 of the Great Green Document emphasize the need to establish a fraternal human society free from aggression, wars, exploitation and terrorism in which atomic, biological, chemical and other weapons of mass destruction will be abolished and stockpiles thereof destroyed and in which the arms trade will likewise be

abolished and the manufacture of weapons restricted in order to free human society from the threats that they pose. This is in keeping with the aim of article 6, paragraph 3, of the Covenant.

131. With regard to the provisions of article 6 of the Covenant, article 436 of the Code of Criminal Procedure prohibits the infliction of capital punishment on a pregnant woman until two months after her delivery and article 81 of the Code likewise prohibits the infliction of capital punishment on a young offender under 18 years of age, his penalty being commuted to a term of not less than five years' imprisonment, which he must serve in an institution which caters for his welfare and his psychological and social rehabilitation.

132. The Libyan legislation in force does not contain the explicit provision found at the end of article 6, paragraph 1, of the Covenant, namely "No one shall be arbitrarily deprived of his life". However, the absence of such a stipulation in the Libyan legislation to which we have referred does not imply that this right can be infringed, since the above-mentioned Libyan legislative provisions can be interpreted, without difficulty, in such a way as to achieve the aim of covering this principle. This affirmation is substantiated on the following grounds:

(a) The Libyan legislature restricts the infliction of the death penalty to cases in which the life of an individual offender is likely to endanger or corrupt society. Hence, the spirit of our legislative provisions can be interpreted as signifying that "no one shall be arbitrarily deprived of his life", which does not necessarily involve a legally prohibited act. Arbitrariness occurs primarily when the provisions of the law are interpreted in such a way as to convey more than their intended meaning or when a person is deprived of his life in violation or contravention of the law.

(b) The provisions of the Covenant, having been ratified and published in the Official Gazette, are binding on our country's judiciary in the same way as any of our domestic legislation - except in controversial cases - and any person seeking to uphold a right or having an interest therein may invoke them before the courts and demand their application by the judiciary. In our criminal law, the rule is that the offender benefits from the provisions that are more favourable to his legal position in the proceedings in order to ensure that the provisions of the law are properly applied to the facts of the case in keeping with the principle that the penalty to be imposed should be that which the legislature had in mind when designating certain acts as punishable criminal offences.

Article 7

The corresponding provisions of our domestic legislation

133. Article 2 of the Great Green Document on Human Rights stipulates that: "The society of the Jamahiriya prohibits penalties that detract from human dignity and are detrimental to human well-being, such as the penalties of hard labour and long terms of imprisonment. The society of the Jamahiriya also

prohibits the infliction of physical or mental harm on the person of a prisoner and condemns the practice of using prisoners as bargaining tools or subjecting them to experimentation."

134. According to article 6 of the Promotion of Freedom Act: "Everyone has a right to security of person and it is prohibited to conduct scientific experiments on the body of any living person without his voluntary consent." Article 17, paragraph 2, of the Promotion of Freedom Act further stipulates that: "It is prohibited to subject an accused person to any form of physical or mental torture or other cruel, inhuman or degrading treatment." Article 435 of the Penal Code, which refers specifically to torture, stipulates that: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment."

135. With regard to the abusive use of authority against individuals, article 431 of the Penal Code stipulates that: "Any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or arbitrarily cause him physical pain is liable to a penalty of imprisonment and a fine of up to 150 dinars."

136. A comparison between these texts as a whole and the provisions of article 7 of the Covenant enables us to reach the following conclusions:

(a) Penalties that detract from human dignity or are detrimental to human well-being, such as penalties of hard labour and long terms of imprisonment, are prohibited by law. It is also prohibited to inflict physical or mental harm on the person of a prisoner or to subject him to medical experimentation (article 2 of the Great Green Document on Human Rights).

(b) Everyone has a right to security of person and it is prohibited to conduct scientific experiments on the body of any living person without his free and voluntary consent (article 6 of the Promotion of Freedom Act). These provisions, concerning the right to security of person and the inadmissibility of subjecting any living person to medical experimentation without his consent, are clearly consistent with article 7 of the Covenant.

(c) It is prohibited to subject an accused person to any form of physical or mental torture or other cruel, inhuman or degrading treatment (article 17 of the Promotion of Freedom Act). In this connection the Libyan Act contains a definition which is similar to that found in article 4 of the Convention against Torture and consistent with article 7 of the Covenant.

(d) Libyan law contains special provisions to prevent acts of torture, regardless of whether they are ordered or personally carried out by a public official. In this regard, the legislature has prescribed heavier penalties whenever a public official is involved in an act of torture (article 435 of the Penal Code). Moreover, it is a legally prohibited and punishable offence for any public official, in the discharge of his duty, to use violence against any person in such a way as to detract from his dignity or cause him physical pain (article 431 of the Penal Code).

137. The offences referred to in articles 435 and 481 of the Libyan Penal Code fall within the category of offences against personal liberty.

138. In the light of the above, the provisions of Libyan legislation can be said to fully cover the requirements of article 7 of the Covenant. Moreover, the Jamahiriya is a party to the Convention against Torture the provisions of which, like those of the International Covenant on Civil and Political Rights, are enforceable and binding on our national judiciary and any interested party is entitled to demand their application in the case or cases concerning him, as has already been repeatedly indicated in this report.

Article 8

The corresponding legislative provisions

139. In Libyan law, the offences of slavery and the slave-trade fall within the category of offences against individual liberty, while the offences of the exploitation of prostitutes, the international trade in women and facilitation of the trade in women fall within the category of offences against liberty, honour and morality. The Libyan legislature shows special concern for this type of offence in view of their connection with the various types of offences involving slavery.

140. With regard to offences involving slavery, article 425 of the Penal Code stipulates that: "Anyone who enslaves another person or places him in a situation similar to slavery shall be punished by a term of 5-15 years' imprisonment." Article 426 in the section entitled "Dealing or trading in slaves" stipulates that: "Anyone who deals or trades in slaves or in any way disposes of a person held in a state of slavery or a state resembling slavery shall be punished by a term of up to 10 years' imprisonment. A penalty of 3-13 years' imprisonment shall be imposed on anyone who sells, gives away, possesses or acquires a person held in slavery or in a state similar to slavery or causes him to remain in the said state."

141. If we compare the text of articles 425 and 426 of the Penal Code with the provisions of article 8 of the Covenant, we find that the prohibition of slavery, servitude and the slave-trade in all their forms is covered by the said two articles in the manner required by article 8, paragraph 1, of the Covenant. In fact, the wording of those Libyan legislative provisions is virtually identical with the concepts and terminology used in the Covenant. Anyone who deals or trades in slaves or in any way disposes of a person in a state of slavery or a state similar to slavery is punishable by imprisonment and the same penalty is imposed on anyone who sells, gives away or acquires a person held in slavery or in a state similar to slavery or causes him to remain in the said state.

142. Article 425 of the Penal Code, which designates enslavement of any person as a punishable offence, clearly reflects the provision contained in article 8 of the Covenant ("No one shall be held in slavery"). This article of the Libyan Penal Code goes even further by prohibiting the placement of any person in a state similar to slavery, other forms of which have been engendered by the realities of contemporary life in the fields of narcotic drugs and prostitution in which, in some cases, the means of coercion used

even include the placement of persons in a state similar to slavery. Cases involving incitement to, or facilitation of, prostitution and the exploitation of prostitutes are dealt with in other provisions of Libyan legislation, as we will see. In short, Libyan law prohibits all forms of the possession, acquisition or retention of persons in a state of slavery or a state similar thereto.

143. Articles 415, 416, 417, 418 and 419 of the Libyan Penal Code deal with cases relating to personal liberty which involve a form of slavery, such as incitement, or coercion to engage in prostitution, exploitation of prostitutes, the international trade in women and facilitation of the trade in women. In our view, the provisions of article 8, paragraph 1, of the Covenant are consistent with those contained in Libyan legislation, which refers to cases and forms of slavery and servitude that are defined only in fairly general terms in article 8.

144. Forced labour is not among the primary penalties prescribed by the Penal Code, which makes provision only for the penalty of physical constraint (simple imprisonment). The cases in which this penalty can be imposed are defined in article 464 of the Code, which does not permit the infliction of physical constraint on convicted persons under 18 years of age.

145. The aim of the legislature is to eliminate all forms of forced labour. In emergency situations in which persons can be legally required to perform certain types of work on a temporary basis for specific periods of time, fair compensation must be paid for their efforts in this regard.

146. The legislature does not recognize the principle of conscientious objection to the performance of military service, instead of which it applies the principle of "productive service" at places of work the nature of which is closely related to the field of specialization of the person subject to national service; for example, engineering for engineers, judicial work or social service for law graduates and fields of medical service for graduates of colleges of medicine, etc. The period of productive service is one year instead of three years and a wage is paid in return for its performance at the service and production locations corresponding to the field of specialization of the person called upon to perform it.

Domestic servants

147. Article 22 of the Great Green Document on Human Rights refers to domestic servants, whom it describes as "the serfs of the modern age, slaves of their employers, whose status is regulated by no law and who have no adequate guarantee of protection; they live at the mercy of their employers and, under pressure of need, are forced to exercise a degrading and humiliating occupation. Homes should be looked after by their occupants". This is a highly advanced concept concerning that category of workers for whom, in the Great Green Document on Human Rights, the Libyan legislature shows special concern which exceeds that shown by international law or the various systems of protection provided for in the legislation of the States parties to the Covenant.

Article 9

The corresponding legislative provisions

Article 9, paragraph 1

148. With regard to the right to liberty and security of person and the prohibition of arbitrary arrest or detention, article 2 of the Great Green Document stipulates that: "The society of the Jamahiriya venerates and protects human freedom and prohibits any restrictions thereon. Imprisonment should be imposed only on those whose freedom threatens or undermines that of others. The aim of this penalty is to promote social reform and protect human values ... ."

149. Article 14 of the Promotion of Freedom Act further stipulates that: "No person's liberty may be restricted or taken away, nor shall anyone be searched or questioned except by order of a competent judicial authority and in the legally stipulated circumstances and time limits if he is accused of committing a legally punishable act. Accused persons remanded in custody shall be held at a designated location, of which their families must be notified, for the shortest period needed for the investigation and the preservation of evidence."

150. According to article 30 of the Code of Criminal Procedure: "No one may be arrested or detained except by order of the legally competent authorities."

151. According to article 31 of the same Code: "No one shall be detained at places other than the prisons intended for that purpose. No prison warden shall admit any person thereto without an order signed by the competent authority, nor shall he retain the said person therein beyond the time limit specified in that order."

152. A comparison between the above legislative provisions and the text of article 9, paragraph 1, of the Covenant shows that the two sources share the following common principles:

(a) The right to liberty is venerated and protected by society. Restriction of liberty is prohibited by law and imprisonment is an exceptional penalty for persons whose liberty endangers society. All this is in conformity with the general principle set forth in the Great Green Document on Human Rights, according to which this penalty has a social function insofar as its purpose is to promote social reform and protect human values.

(b) No one may be subjected to restriction or deprivation of his liberty, nor may he be searched or questioned unless he is accused of committing a legally punishable act. Imprisonment and restriction of liberty are permissible only by order of a competent judicial authority, in respect of a legally prohibited act, in the circumstances and time limits specified by law, at a designated location of which the family of the accused is notified, and for the shortest period needed for the investigation and the preservation of evidence.

153. Arbitrary arrest, detention and deprivation of liberty are prohibited under the terms of article 14 of the Promotion of Freedom Act No. 20/1991. Articles 30 and 31 of the Code of Criminal Procedure incorporate the guarantees required by article 9, paragraph 1, of the Covenant. No one can be arrested except by order of the legally competent authorities (article 30). No one may be imprisoned except in the prisons established for that purpose and it is legally prohibited for a prison warden to admit a person to his prison without an order signed by the competent authority; it is likewise prohibited for him to retain a prisoner for a period longer than that specified in the order (article 31).

Article 9, paragraph 2

154. With regard to the arrested person's right to be informed of the reasons for his arrest, it is only natural that the arrest or detention order issued by a competent judicial authority should contain an explanation or statement of the reasons for which the accused was arrested and of the charge brought against him. This is one of the basic rules governing arrest, as well as appearance and questioning before a criminal investigation officer, the Department of Public Prosecutions or an examining magistrate.

155. In this connection, article 113 of the Code of Criminal Procedure stipulates that the Department of Public Prosecutions must verify all the personal particulars of the accused, inform him of the charge brought against him and record his statements in that regard.

156. Article 32 of the Code of Criminal Procedure regulates inspection visits to prisons, while article 33 concerns complaints by prisoners, unlawful imprisonment and additional guarantees in the field covered by article 9, paragraph 2, of the Covenant.

Article 9, paragraph 3

157. With regard to the appearance of the person arrested or detained on a criminal charge before a judge or other officer authorized by law to exercise judicial power:

(a) On the question of the hearing of the statements of the person arrested, article 26 of the Code of Criminal Procedure stipulates that: "The criminal investigation officer must immediately hear the statements of the arrested suspect and, if the latter is unable to exculpate himself, must refer him to the competent public prosecutor within 24 hours."

(b) With regard to the questioning of the accused, article 112 of the Code of Criminal Procedure stipulates that: "The examining magistrate must question the arrested suspect immediately and, if this is impossible, must remand him in custody until such time as he can be questioned. The period of remand in custody must not exceed 24 hours and, once this time limit has expired, the prison warden must hand him over to the Department of Public Prosecutions."

158. The following conclusions can be drawn from the above-mentioned legislative provisions:

(a) With regard to the obligation to bring the accused before a judge or other officer authorized by law to exercise judicial power, the criminal investigation officer, in his capacity as an official attached to the judiciary, is authorized by law to hear and record the statements of the accused. He must release the accused if the latter is able to exculpate himself, or refer him to the competent public prosecutor within 24 hours (article 26, paragraph 1, of the Code of Criminal Procedure).

(b) The Department of Public Prosecutions must question the accused within 24 hours, failing which the prison warden must hand him over to the Department of Public Prosecutions, which must request the examining magistrate to question him immediately, failing which it must order his release (article 112 of the Code of Criminal Procedure) unless the President of the Court of Appeal instructs a magistrate to question the accused, or questions him himself, at the request of the Department of Public Prosecutions.

159. By legally empowering three judicial levels to examine, question and hear the statements of the accused, the Libyan legislature provides adequate guarantees within the framework of the requirements of article 9, paragraph 3, of the Covenant. At all events, detention is not the general rule since either the Department of Public Prosecutions or the examining magistrate may decide to provisionally release the accused with or without bail (article 124 of the Code of Criminal Procedure).

160. The activities of the examining magistrate are subject to judicial control in accordance with article 58 of the Code of Criminal Procedure, which stipulates that: "The President of the Court of Appeal must monitor the activities of the examining magistrates to ensure that they are carried out with the requisite speed and with due regard for the legally specified time-limits." This provision prevents any delay exceeding the exigencies of the investigation to discover the truth.

Article 9, paragraph 4

161. The right of anyone who is deprived of his liberty by arrest or detention to take proceedings before a court is guaranteed by article 30 of the Promotion of Freedom Act, which stipulates that: "Everyone has the right to petition a court in accordance with the law. The court shall provide him with all the necessary safeguards, including legal counsel, and the applicant is entitled to avail himself, at his own expense, of the services of a lawyer of his own choosing."

162. In accordance with this provision, anyone who has suffered detriment by being deprived of his liberty by unlawful arrest or detention is entitled to apply to a court to consider the legality of his detention. The court must order his release if his detention was unlawful. The above-mentioned provisions covering levels of examination before the Department of Public Prosecutions or an examining magistrate and the hearing of the statements of the accused by a criminal investigation officer (article 26, paragraphs 1 and 2, and article 112 of the Code of Criminal Procedure) serve the purpose since, under the terms of their provisions, those judicial bodies are obliged

to either detain the suspect if the charge against him is substantiated or release him if he is found to be innocent or if there is inadequate evidence against him.

163. At all events, an aggrieved party can invoke the provisions of article 3 of the Code of Criminal Procedure, which lays down a general and absolute rule concerning the right to file a complaint, and article 17 of the same Code, under which anyone claiming to have suffered detriment as a result of an offence has the right to bring civil proceedings in connection with the complaint that he lodges with the Department of Public Prosecutions or a criminal investigation officer.

Article 9, paragraph 5

164. With regard to the right of the victim of unlawful arrest or detention to claim compensation, articles 17, 60 and 173 of the Code of Criminal Procedure guarantee the right of the victim, in the cases referred to in article 9 of the Covenant, to claim compensation, at the time when his statements are heard by the criminal investigation officer or at the time of his examination by the Department of Public Prosecutions or by the examining magistrate, in respect of the detriment suffered. In fact, the victim who has suffered detriment as a result of an offence can file a civil claim with any or all of these three bodies.

165. The aggrieved party may also invoke the general rules concerning liability and, in particular, damages (articles 167 and 168 of the Civil Code). At all events, the State is liable for damages resulting from the acts of its agents in the cases with which we are concerned if their acts cause damage to the victim. Administrative law also allows scope for application of the theory of material aggression when an individual suffers damage as a result of acts committed by civil servants.

166. The above examples show that the legislative provisions in force in the Jamahiriya are fully consistent with the text of article 9 of the Covenant. The aggrieved party is entitled to invoke the provisions of the Covenant in the same way as the domestic legislation in force in the Jamahiriya even though, in this regard, article 9 of the Covenant implies the jurisdiction of national legislation. In this field, the aggrieved party finds legislative provisions that guarantee this right, as already indicated.

Remand in custody

167. The Committee has expressed concern at the question of the duration of remand in custody, which might be lengthy. Libyan legislation specifies the duration of remand in custody as follows.

168. Article 122 of the Code of Criminal Procedure states that: "The suspect may be remanded in custody for a period of up to 15 days. However, after listening to the statements of the Department of Public Prosecutions and the suspect, the examining magistrate may extend his remand in custody for a period or periods not exceeding a total of 45 days".

169. Article 123 of the same Code provides that: "If the examining magistrate deems it appropriate to extend the period of remand in custody beyond the time-limit specified in the preceding article, before the expiration of the said period he must submit the case file to the indictment division of a court of first instance so that it can issue an appropriate order after listening to the statements of the Department of Public Prosecutions and the suspect. The said division may extend the duration of remand in custody for successive periods not exceeding a total of 45 days until the investigation has been completed".

170. Through the above provisions of articles 122 and 123, the legislature makes allowance for an extension in the interests of the investigation which, however, might not necessarily require the full period of the extension. The investigation might be completed within the period granted to the examining magistrate or, alternatively, might necessitate further periods of remand in custody, subject to approval by the indictment division.

Article 10

The corresponding legislative provisions

171. Article 17 of the Promotion of Freedom Act stipulates that: "It is prohibited to subject an accused person to any form of physical or mental torture or cruel, degrading or inhuman treatment".

172. Article 435 of the Penal Code further stipulates that: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment".

173. Accordingly, article 17 of the Promotion of Freedom Act prohibits the subjection of an accused person to any form of physical or mental torture and, in particular, any form of cruel, inhuman or degrading treatment. In our view, this text is consistent with the aim of article 10, paragraph 1, of the Covenant, which is to ensure that persons deprived of their liberty are treated with humanity and with respect for the dignity of the human person.

174. Article 435 of the Penal Code adds a similar provision under which the practice of torture against accused persons by or on the orders of a public official is a punishable offence.

175. The provisions of these two articles apply to persons whose liberty is restricted through remand in custody or after conviction while they are serving their sentence.

176. Article 31 of the Code of Criminal Procedure stipulates that persons may be detained only in the prisons established for that purpose.

177. Detention is effected in well-known premises established for that purpose which are easy to control and inspect in order to ascertain whether the conditions of detention therein are in conformity with the law and whether any of the detainees have complaints. In article 32 of the Code, the Libyan legislature empowers members of the Department of Public Prosecutions, supervisory magistrates and the presidents and vice-presidents of courts of

first instance and courts of appeal to visit the public prisons in their areas of jurisdiction in order to ensure that no one is being detained therein unlawfully.

178. In specified cases involving complaints by detainees or unlawful detention, article 33 of the Code grants any detainee the right to submit a written or verbal complaint, at any time, to the prison warden and to request him to transmit it to the competent judge or the Department of Public Prosecutions. The warden is under an obligation to accept and promptly transmit the complaint. These provisions apply to any violation of the detainee's dignity.

179. The Prisons Act No. 47 of 1975 distinguishes between detainees on the basis of their age, their penalty and the nature of their offence. The following categories are accommodated in special open or semi-open prisons:

(a) Persons remanded in custody;

(b) Persons sentenced for traffic and other minor offences;

(c) Elderly persons over 60 years of age who are sentenced to terms of detention;

(d) Persons sentenced to physical constraint under the terms of financial judgements (article 7 of the Penal Code).

180. With regard to treatment and living conditions, the inmates of each central or local prison are divided into two categories which are segregated from each other. The Prisons Act does not permit the accommodation of detainees over 18 but under 21 years of age in the central prisons beside persons sentenced to long terms of imprisonment (article 19 of the Prisons Act).

181. Under article 20 of the Act, persons remanded in custody are subject to special regulations. They are segregated from other prison inmates and may be granted permission to live in furnished rooms, in return for payment, within the limits of the available facilities and in accordance with the prison regulations. They are allowed to purchase the food that they need, or have it brought to them, from outside the prison subject to the requirements of public health and public security.

182. The Libyan legislature has made provision for special treatment of juveniles, who cannot be placed in remand centres but must be accommodated at welfare institutions while they are under investigation or awaiting judgement.

183. Article 316 of the Code of Criminal Procedure makes provision for a special juvenile court, the powers of which are specified in article 317. The judgements handed down by the juvenile court constitute preventive measures under which the juvenile is placed in a welfare institution or delivered into the custody of a trustworthy person during the investigation and before conviction (article 318 of the Code). Before sentences can be enforced, they must be reviewed by the supervisory magistrate.

184. Article 81 of the Penal Code stipulates that: "Convicted young persons shall serve their sentences at an institution for juveniles bearing criminal responsibility for their acts. In the said institution, they shall be subjected to a special educative and reformative system designed to deter them from further acts of delinquency and prepare them to become upstanding members of society".

185. With regard to article 10, paragraph 3, of the Covenant, article 18 of the Promotion of Freedom Act stipulates that: "The purpose of penalties is to reform, correct, rehabilitate, educate, discipline and admonish".

186. Article 2 of the Great Green Document defines the purpose of penalties as "social reform and protection of human values and of the interests of society". This is a general principle which is further elaborated in article 18 of the Promotion of Freedom Act. The social aim of penalties, as a reform system, is defined in article 81, paragraph (p), of the Penal Code, which speaks of the purpose of accommodating criminally responsible juveniles in welfare institutions.

187. Article 41 of the Penal Code contains a more precise definition of the principles to be used as guidelines when enforcing penalties. The method of enforcement of the penalty should aim to reform and educate the offender in such a way as to achieve the moral and social objectives of the penalty. When enforcing penalties involving a restriction of liberty, due regard should be shown for humanitarian principles and the principles of work and correction.

188. Article 1 of the Prisons Act defines the function of penal institutions as follows: "Prisons are places of reform and education designed to correct the behaviour of persons sentenced to criminal penalties involving deprivation of liberty and to rehabilitate them so that they can become upstanding members of society".

189. The above legislative texts meet the requirements of article 10 of the Covenant in regard to the social aim and purpose of penalties.

Article 11

190. The Libyan Civil Code does not permit the imprisonment of any person on the ground of his inability to fulfil a contractual obligation.

191. In this regard, the Libyan legislature makes only one exception, namely the debt of maintenance. In fact, the law permits imprisonment if a person having an obligation to pay maintenance to his wife and minor children in their mother's custody refuses to honour his obligation.

Article 12

The corresponding legislative provisions

192. Article 3 of the Great Green Document on Human Rights states: "The members of the society of the Jamahiriya enjoy freedom of movement and residence in time of peace."

193. Article 20 of the Promotion of Freedom Act provides that: "In time of peace, every citizen has the right to freedom of movement and freedom to choose his place of residence, as well as the right to leave the Jamahiriya and to return thereto whenever he wishes."

194. Article 25 of the draft Constitution states: "Every citizen has the right to freedom of movement and residence and to return to his home country. No citizen shall be expelled from the country or prevented from returning thereto."

195. The following conclusions may be drawn from the foregoing legal provisions:

(a) The members of the society of the Jamahiriya, "who are necessarily Libyans", enjoy freedom of movement and residence. Moreover, the fact that article 3 of the Green Document restricts the enjoyment of such freedom to time of peace is only natural, since it is common practice, when serious disturbances of public order necessitate the proclamation of a state of emergency, to impose temporary restrictions on freedom of movement and residence.

(b) According to article 20 of the Promotion of Freedom Act, which is a more detailed statement of the general principle set forth in article 2 of the Great Green Document on Human Rights, in time of peace, every citizen has the right to freedom of movement and freedom to choose his place of residence, as well as the right to leave the Jamahiriya and to return thereto whenever he wishes.

196. Article 25 of the draft Constitution reinforces the principles of freedom of movement and residence and freedom to return to the Jamahiriya. Furthermore, this article, while remaining consistent with the above-mentioned legal provisions, affirms the principle that no citizen may be expelled from the country or prevented from returning thereto. Libyans therefore enjoy freedom of movement, freedom to choose their place of residence and freedom to return thereto whenever they wish, in accordance with the provisions of article 12, paragraphs 1, 2 and 4, of the Covenant, in particular the provision that no one shall be deprived of the right to enter his own country.

197. With regard to the exceptional derogations mentioned in article 4 of the Covenant, paragraph 3 permits certain restrictions which are provided by law and are necessary to protect public security, public health or morals or the rights and freedoms of others. These restrictions are associated with the maintenance of public security or public health in the event of natural disasters or serious disturbances of public order that necessitate the proclamation of a state of emergency and have already been dealt with in the paragraph concerning "states of emergency" in the context of the comparison with article 4 of the Covenant.

198. The Human Rights Committee has stated that the reports of States parties should provide information on the conditions for issuing and withdrawing travel documents, etc. Act No. 4 of 1985 concerning travel documents contains the following provisions:

(a) The body with sole and exclusive authority to issue passports within the Jamahiriya is the Directorate-General for Passports and Nationality. Outside the Jamahiriya, these matters are handled by the Fraternal Bureaux, 4/ the People's Bureaux 5/ and the bodies responsible for looking after Libyan interests, in accordance with the rules laid down in article 2 of the Passports Act.

(b) Ordinary passports shall be issued only to nationals of the Libyan Arab Jamahiriya (article 5 of the Passports Act). According to article 12 of the Act, travel documents shall not be issued or shall be withdrawn in the following cases:

Where the person concerned has been convicted of an offence that attests to his lack of allegiance to the country and the revolution;

Where there are strong grounds for such a decision relating to public security or protection of the national interest. It should be noted in this connection that Libyan citizenship cannot be forfeited or withdrawn, since it is a sacred right under article 4 of the Great Green Document on Human Rights.

199. To avoid repetition, the legal provisions applicable to foreigners will be discussed in connection with article 13 of the Covenant. It may be noted in passing that Act No. 6 of 1987 governing the entry of foreigners regulates the entry, departure, residence and expulsion of foreigners in articles 2, 5, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

200. We conclude from the foregoing that the scope of domestic legislation is such as to ensure compliance with the aims set forth in the provisions of the Covenant.

The right of Libyans to freedom of movement

201. It has to be said, however, in view of the situation with which the Libyan Arab people are faced as a result of the embargo on air transport and the restrictions on travel and movement, that Libyans do not fully enjoy the right to freedom of movement in accordance with the provisions of article 12 of the Covenant. The restrictions imposed on Libyans by the Security Council resolutions are absolutely inconsistent with the provisions of the Charter of the United Nations and the above-mentioned article and constitute a flagrant violation thereof. If the Human Rights Committee wishes to monitor States parties' compliance with their obligations under the Covenant, it should in turn be aware, as a matter of course, of the restrictions that prevent the population of a State party - men, women, the elderly and children - from enjoying the rights guaranteed therein, not on account of any action by the authority representing the State of which they are citizens but because of the will of others who hide their designs beneath a mantle of legitimacy and interpret the provisions of the Charter in the light of their political interests. The grounds invoked for the adoption of resolutions through the Security Council violated the most important principle enshrined in the Covenant, namely: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

Article 13

202. The conclusions to be drawn from the text of article 13 are the following:

(a) An alien who is lawfully in the territory of a State party to the Covenant may not be expelled;

(b) Expulsion is permissible only in pursuance of a decision reached in accordance with law;

(c) The expelled party must be allowed to submit his case to the competent legal authority or to a person designated by the authority and to be represented for that purpose, except where compelling reasons of national security otherwise require.

The corresponding legislative provisions

203. The entry of foreigners into the Jamahiriya and their departure therefrom are regulated by articles 1, 2, 5, 8 and 10 to 19 of Act No. 6 of 1987 governing the entry of foreigners into the Jamahiriya, their residence in the country and their departure therefrom. The provisions that concern us here, however, are those relating to the legal status of foreigners. The conditions governing the entry of foreigners by means of an entry visa into the territory of the Jamahiriya, their departure therefrom and their residence therein are laid down in articles 8 and 13. Other articles deal with expiry of the right of residence (article 14), possibility of cancellation of a residence permit issued to a foreigner (article 16), circumstances warranting expulsion (article 17) and restriction of residence where necessary (article 18).

204. Article 1 of Act No. 6 of 1987 stipulates that the competent authorities shall specify the points of entry into and departure from Libyan territory. Article 2 thereof stipulates that a foreigner shall be authorized to enter Libyan territory and reside there on condition that he possesses a legally valid visa, in a passport or other equivalent document, and provided that the passport or document in question is valid and has been issued by a competent and recognized authority.

205. Article 5 provides for the following types of visa:

(a) An entry visa authorizing entry for the purpose specified therein;

(b) A transit visa permitting the bearer to pass through Libyan territory to reach the territory of another State;

(c) An exit visa permitting the bearer to leave Libyan territory;

(d) A residence permit permitting the bearer to remain in Libyan territory for the period and for the purpose specified therein.

206. Article 8 imposes the following obligations on the foreigner:

(a) Compliance with the regulations and laws in force in the Jamahiriya;

(b) Registration with the nearest passport authority within seven days from the date of entry and submission of particulars and documents relating to himself and the members of his family;

(c) Submission of any particulars requested within the prescribed time-limit and notification of loss of, damage to or expiry of his travel document.

207. Article 11 of Act No. 6 of 1987 stipulates that a foreigner who has been granted permission to enter and reside in the Libyan Arab Jamahiriya for a specific purpose shall not act in breach of that purpose without obtaining written permission from the Director-General of Passports and Nationality or his delegated representative.

208. Article 6 stipulates that the residence permit issued to a foreigner may be withdrawn in the following circumstances:

(a) If his presence threatens the internal or external security or integrity of the State, its economy, public health or public morals or if he is a burden on the State;

(b) If he is convicted of a felony or a misdemeanour prejudicial to honour, trustworthiness or public security. Such cases fall within the scope of articles 144/4 and 137 of the Penal Code. The expulsion of a foreigner is dealt with under article 144/4 as a precautionary measure taken by order of a judge;

(c) If he violates the conditions imposed on him at the time of issue of the permit;

(d) If the reason for which the permit was issued to him no longer applies. The permit is withdrawn, regardless of its period of validity, by order of the Director-General of Passports and Nationality.

209. Article 17 of the same Act stipulates that a foreigner may be expelled in the following circumstances:

(a) If he entered the country without a visa;

(b) If he refuses to leave the country on the expiration of his residence permit which the competent authority has refused to extend;

(c) If his residence permit is withdrawn for any of the reasons specified in article 16;

(d) If a court of law orders his expulsion.

In the cases referred to in (a), (b) and (c) above, expulsion is effected on the basis of a substantiated decision by the Director-General of Passports and Nationality.

210. The following conclusions may be drawn from a comparison between the Libyan legislative provisions and the provisions of the Covenant.

(i) A foreigner residing in the Libyan Arab Jamahiriya on the basis of an entry visa and a residence permit for the purpose or purposes specified therein is considered to be a lawful resident under the terms of the Act regulating the entry, departure and residence of foreigners.

(ii) The authority that issues an entry visa and residence permit or an entry visa without a residence permit is empowered under the law to expel the foreigner concerned.

(iii) The circumstances in which a foreigner may be expelled under Libyan law are set out exhaustively in the Act: if the foreigner entered the country without a visa, if he refuses to leave the country on the expiration of his entry visa or residence permit, or if a court of law orders his expulsion.

(iv) The residence permit issued to a foreigner may be withdrawn if his presence threatens the internal or external security or integrity of the State, its economy, public health or public morals or if he is a burden on the State.

211. It may also be withdrawn if he is convicted of a felony or a misdemeanour denoting lack of integrity. Such convictions are in most cases accompanied by an expulsion order issued by the judge who hears the case.

212. The expulsion order is a substantiated decision and may be challenged in order to establish whether it is consistent with the relevant legislative provisions and whether it is based on reliable grounds, unless compelling reasons of national security require otherwise.

213. Irrespective of the guarantees provided to foreigners under the International Covenant on Civil and Political Rights and the corresponding provisions of domestic legislation, their legal status remains subject in all States to the discretionary authority of the body responsible for expulsion, which is usually motivated by considerations of security and of public morals and health and to an even greater extent by reasons of State, through which States protect themselves behind a solid wall of justificatory arguments that are difficult to ascertain and penetrate in inter-State relations.

Article 14

The corresponding legislative provisions

214. Article 26 of the Great Green Document on Human Rights and article 30 of the Promotion of Freedom Act clearly stipulate that every person has the right to resort to the courts to seek legal remedy for any violation of his rights and freedoms, etc.

215. The principle contained in the two texts unequivocally confers this right on every individual. According to article 1 of the Promotion of Freedom Act, all citizens, whether male or female, are free and equal in regard to their rights, which are inviolable. Equality is legally guaranteed in respect of the enjoyment of rights and also in respect of the right to resort to the courts. The Libyan legislature obliges the court to provide all the necessary safeguards, including legal counsel, but a person is also entitled to avail himself, at his own expense, of the services of a lawyer of his own choosing.

216. The law confers an unequivocal right to resort to the courts in civil and criminal proceedings.

217. Article 241 of the Code of Criminal Procedure stipulates that: "The proceedings shall be held in public. However, the court may, for reasons of public order or morals, order that the case be heard partly or wholly in camera, or prohibit certain categories of persons from attending." The judgement is in all cases delivered in public. Enforceable judgements may be handed down only by a competent civil or criminal court and article 420 of the Code of Criminal Procedure stipulates that the legally prescribed penalties for an offence shall be imposed only on the basis of a judgement handed down by a competent court.

218. With regard to the independence and impartiality of the courts, article 28 of the Constitutional Declaration stipulates that: "Judges are independent and are subject to no authority other than their conscience and the law." The Green Document and the Promotion of Freedom Act reaffirm this principle in article 9 and article 38 respectively. Article 9 of the Document states that society guarantees the right to seek legal redress, as well as the independence of the judiciary, and that every accused person has the right to a fair and impartial trial.

219. Article 31 of the Promotion of Freedom Act stipulates that: "Judges are independent and, in their administration of justice, are subject to no authority other than the law." Article 80 of the draft Constitution is based on this premise and, regardless of the value attached to conclusions drawn from a draft instrument, at all events the Constitution confirms an ongoing staunch legislative tendency to support this principle.

220. It may therefore be concluded that the provisions of article 14, paragraph 1, of the Covenant are fully reflected in Libyan legislative enactments currently in force and in those that are still at the preparatory stage, such as the draft new Constitution.

Article 14, paragraph 2

221. This paragraph concerns the right of everyone charged with a criminal offence to be presumed innocent until proved guilty according to law.

222. Article 17 of the Promotion of Freedom Act stipulates that: "The accused is presumed innocent until proved guilty by a court judgement. Legal measures can nevertheless be taken against him as long as he stands accused."

223. The law is unequivocal in this regard. A person is initially deemed to be innocent and he continues to enjoy that status until proved guilty by a court judgement. The verdict declaring him guilty must be handed down by a competent legally established court which provides the accused person with guarantees concerning his defence. Penalties may be imposed solely on the basis of a judgement handed down by such a court. Naturally, the unlawful act with which an accused person is charged must constitute an offence, in accordance with the principle that "There shall be no crime or punishment except as defined by law" (article 1 of the Penal Code). It should be noted that the provision in the second sentence of article 17 of the Promotion of Freedom Act concerning the possibility of taking legal measures against the accused person refers to measures that are necessitated by the circumstances of the criminal act such as preventive detention, arrest, arraignment, questioning, etc. and is not applied for other purposes.

Article 14, paragraph 3

224. The right of the accused person to be informed of the nature of the charge against him and of the offence that it constitutes in the eyes of the law is a fundamental principle observed at all stages of the investigation: before the criminal investigation officer or the Department of Public Prosecutions, during examination before a magistrate or even in court during the trial, since the court is empowered to question the accused in order to ascertain his view regarding the charge against him and the offence for which he is being prosecuted. We have already discussed this aspect in our commentary on article 9, paragraph 2, of the Covenant.

225. It may be noted in this connection that articles 31, 32 and 33 of the Code of Criminal Procedure meet the requirements laid down in article 14, paragraph 3 (a).

226. Under article 30 of the Promotion of Freedom Act and principle 9 of the Green Document, the accused person is guaranteed such facilities as the right to seek legal redress and the right to be assigned a lawyer for his defence or, alternatively, to avail himself, at his own expense, of the services of a lawyer of his own choosing (article 14, paragraph 3 (b) and (c), of the Covenant).

Trial in the presence of the accused

227. The presence of the accused in court is required by law in the case of felonies and misdemeanours punishable by custodial sentences. Article 243 of the Code of Criminal Procedure stipulates that: "The defendant shall attend the hearing without handcuffs or other means of restraint and he shall not be

removed from the courtroom unless he causes a disturbance that requires such removal, in which case the proceedings shall continue until they reach a point where he is able to attend. The court shall inform him of the proceedings that took place during his absence."

228. In all criminal cases, the law requires that an accused person be assisted by a defence counsel; if he cannot afford legal assistance, the court assigns a lawyer to act for him at public expense. This being the case, the removal or expulsion of the accused from the courtroom for causing a disturbance does not mean that he is entirely absent from the proceedings since his lawyer is still present to represent him. Nevertheless, the law requires the judge to inform the accused of all the proceedings that took place during his absence in order to hear his opinion thereon if circumstances so require.

229. Article 244 of the Code of Criminal Procedure describes the sequence of proceedings before the court and the hearing of witnesses for the prosecution. The witnesses for the prosecution are examined by the Department of Public Prosecutions, the plaintiff, the civil claimant, the defendant and the bearer of civil liability. The legislature has thus accorded the defendant an equal right to examine the witnesses for the prosecution. Article 245 of the Code of Criminal Procedure stipulates that, after the witnesses for the prosecution have been heard, the witnesses for the defence shall be heard. They are examined by the Department of Public Prosecutions and the last party to examine the witnesses for the defence is the plaintiff. As shown by the above-mentioned provisions, the legislature has sought to achieve a balance in the order in which persons examine the witnesses for the prosecution and for the defence. As a result, the corresponding Libyan legislation proves, on comparison, to be consistent with the provisions of article 14, paragraph 3 (d) and (e), of the Covenant.

230. Libyan legislation (the Code of Criminal Procedure) guarantees the services of an interpreter, free of charge, at every stage of the legal proceedings from the preliminary investigation until the trial, that is to say from the time of appearance before the criminal investigation officer, the Department of Public Prosecutions and the examining magistrate to the stage of consideration of the case in court. At all events, the provisions of the Covenant (article 14, paragraph 3 (f)) are binding on the Libyan judge since they are enforceable in the same way as any domestic legislation in the Jamahiriya.

Article 14, paragraph 3 (g)

231. Article 247, paragraph 1, of the Code of Criminal Procedure stipulates that: "An accused person shall not be interrogated without his consent." The meaning of this provision is clear: the accused person has an unequivocal right not to answer questions unless he so wishes and not to be compelled to testify against himself or to confess guilt, otherwise such testimony or confession would be null and void. Article 304 of the Code of Criminal Procedure establishes as a general principle that where legal provisions relating to any fundamental procedure have not been observed, the result shall be deemed null and void. This principle has been embodied in Libyan jurisprudence through the rulings of the Supreme Court to the effect that no

confession, regardless of its importance, is admissible if it was obtained through coercion (rulings of the Supreme Court in Criminal Appeal SC/26/354 and Criminal Appeal SC/33/165). The argument underlying this principle is that anything built on invalid foundations is invalid.

232. However, article 306 of the Code of Criminal Procedure stipulates that counsel for the defence must object to proceedings that are vitiated by invalid practices in respect of the gathering of evidence, the preliminary investigation or the hearing of cases involving felonies or misdemeanours; otherwise, the right to do so is forfeited.

233. Article 14, paragraph 4, of the Covenant (concerning juveniles) was dealt with in the section containing a comparison between the provisions of article 9 of the Covenant and those of domestic legislation. The Committee is referred to that section in order to avoid repetition. Mention may be made, however, of the following relevant legislative provisions: articles 316, 317, 318 and 319 of the Code of Criminal Procedure concerning juveniles, legal proceedings involving juveniles and the places in which the legislature has ruled that their sentence should be served, taking into account their age and social circumstances.

Article 14, paragraph 5

234. The legislature has laid down the procedures for review of judgements in criminal cases in the provisions concerning objection, appeal and review by the Supreme Court in article 361 of the Code of Criminal Procedure concerning objections and the circumstances in which an objection may be lodged, article 365 concerning appeal and article 381 concerning review by the Supreme Court.

235. In cases involving civil law, Shari'a law and administrative law, the legislature has guaranteed that all judgements handed down by the courts concerned are subject to appeal and review by a higher tribunal.

236. The basic principle in this regard is that an appellant shall not suffer damage through appeal or review of his case and that review by a higher tribunal than that which delivered the judgement shall not impair the legal status of the defendant.

Article 14, paragraph 6

237. This paragraph concerns compensation of an accused person in respect of damage suffered. It should be noted that this issue has been addressed in several paragraphs of this report in the context of a comparative study of the provisions of the Covenant and the domestic legislation in force.

238. With specific reference to the text of article 14, paragraph 6, of the Covenant, it may be noted that this right is guaranteed by article 17 of the Code of Criminal Procedure, which stipulates that: "Any person who claims to have suffered damage as a result of an offence is entitled to lodge a complaint as a civil claimant before the Department of Public Prosecutions or a criminal investigation officer. The Department of Public Prosecutions shall refer any such complaint to the examining magistrate." Article 60 of the Code

of Criminal Procedure contains the following similar provision: "Any person who has suffered damage may constitute himself as a civil claimant during the examination of his case. The examining magistrate shall take the final decision regarding his recognition in that capacity during the examination."

239. The law guarantees the aggrieved party the right to bring a civil action and to submit a claim for compensation to the criminal investigation officer, the Department of Public Prosecutions or the examining magistrate at the stage of gathering of evidence and also at the stage of investigation by the Department of Public Prosecutions and at the time of his appearance before the examining magistrate. Moreover, any person who has suffered damage may exercise the same right when he appears before the court responsible for considering his case (article 224 of the Code of Criminal Procedure).

Article 14, paragraph 7

240. This paragraph provides that: "No one shall be liable to be tried or punished again for an offence of which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

241. The author of the present report admits to some difficulty in understanding the purport of this provision - perhaps the Arabic translation of the paragraph was to some extent responsible.

242. However that may be, article 7 of the Libyan Penal Code stipulates as follows: "Public proceedings shall not be instituted against a person who has been finally acquitted by a criminal court or who has been convicted by such a court and served his sentence."

243. It may be useful to complete our comparative study of the legislation in this regard by drawing attention to article 275 of the Libyan Code of Criminal Procedure, which sets forth the basic principle that judges must be independent, impartial and free to form an opinion for the purpose of rendering judgement in court proceedings. The article stipulates that: "A judge shall render judgement in court proceedings in accordance with the conviction he has formed in complete freedom. He shall not, however, base his judgement on evidence that was not laid before him during the hearing."

244. The independence and freedom enjoyed by a judge to form the opinion on which he bases his judgement are confined solely to such evidence as he has viewed, studied and investigated in documents laid before the court. "Judges are independent and subject to no authority other than the law and conscience."

Article 15

The corresponding legislative provisions

245. Article 1 of the Penal Code, in the chapter setting forth general principles, stipulates that: "There is no crime or punishment except as defined by law."

246. Article 2 of the Penal Code stipulates that:

"Offences are punishable in accordance with the law applicable at the time of their commission. However, if legislation more favourable to the defendant is enacted after the commission of the act and prior to delivery of a final judgement, this later legislation shall be applied.

"If legislation is enacted, following delivery of a final judgement, which makes the act of which the defendant has been convicted no longer punishable, enforcement of the judgement shall be halted and its penal effects shall be annulled."

247. The following practical conclusions may be drawn from a comparison of the provisions of article 15 of the Covenant and the corresponding provisions of domestic legislation:

(a) The legislature determines the acts that constitute offences punishable by law and the penalties to be imposed for such offences. There is no crime or punishment except as defined by law.

(b) Acts constituting a criminal offence are punishable under the law in force at the time they were committed. Moreover, the legislature has adopted the principle that the legislation most favourable to the defendant must be applied if an enactment imposing a lighter penalty for the act constituting an offence is promulgated after commission of the act and prior to delivery of the final judgement.

248. This latter legislation must be applied in all cases, a principle that is in keeping with the reference in article 15 of the Covenant to cases in which provision is made by law for the imposition of a lighter penalty. The Libyan legislature provides for the same eventuality, using the expression "legislation most favourable to the defendant".

(c) If legislation is enacted, following delivery of a final judgement, which makes the act of which the defendant has been convicted no longer punishable, enforcement of the judgement must be halted and its penal effects must be annulled. The foregoing provisions establish the principle of non-retroactivity of criminal legislation and of the penalties imposed by such legislation. Moreover, there is no discrepancy between the provision of article 15, paragraph 2, of the Covenant and existing Libyan legislation.

249. The provisions of domestic legislation fulfil the basic aims of article 15 of the Covenant.

Article 16

The right to legal personality under Libyan law

250. Articles 29, 30, 33, 34, 38, 40 and 44 of the Civil Code establish the right of every individual to recognition as a person before the law.

251. The legislature safeguards the components of legal personality in articles 48, 49, 50 and 51 of the Civil Code.

252. Under Libyan law, legal personality consists of a person's given name and family name, domicile and nationality, and legal capacity to exercise civil rights. Article 38 stipulates that: "Every person shall have a given name, as well as a family name that is passed on to his children." A person's domicile is the place where he usually resides. An individual may have more than one domicile at a given time or he may have no domicile at all (article 40 of the Civil Code). A person may have an elected domicile to practise his profession, to carry on a trade or to engage in any lawful activity (article 41). Article 44 deals with legal capacity to exercise civil rights, such capacity being enjoyed by persons who have attained the age of majority and are of sound mind.

253. Legal personality begins with the individual's live birth and ends with his death (article 29 of the Civil Code). However, the right to legal personality would be of little worth without the legal protection accorded thereto by the legislature. Once legal capacity is established, it may not be waived nor may its terms be modified. The legislature provides the requisite protection for the rights pertaining to legal personality and anyone who has suffered an unlawful infringement of any such right may demand the cessation of that infringement and compensation for any damages resulting therefrom. The same applies to protection of a person's name. (Articles 49, 50 and 51 of the Civil Code.)

254. As a result, everyone has the right under Libyan legislation to recognition as a person before the law and that right is safeguarded from birth until death.

Article 17

The corresponding legislative provisions

1. Promotion of Freedom Act

255. Article 16 stipulates that: "Private life is inviolable and must not be interfered with unless it proves to be detrimental to public order and morality or harmful to others or gives rise to a complaint by one of the parties thereto."

256. Article 19 stipulates that: "Homes are inviolable and must not be entered, searched or placed under surveillance unless they are used to conceal a crime, to shelter criminals, to cause material or moral harm to others or for purposes that are manifestly incompatible with morality and social traditions. Except in cases of flagrante delicto and appeals for aid, houses must not be entered without authorization from a legally competent authority."

257. Article 15 stipulates that: "The confidentiality of correspondence is guaranteed. It must not be censored except to the limited extent required by the exigencies of public security and after obtaining the requisite authorization from a judicial authority."

2. Code of Criminal Procedure

258. Article 34 stipulates that: "Officials shall not enter a place of residence except in such cases as are prescribed by law, in response to an appeal for aid from within, in the event of fire or flooding or in other similar emergencies."

259. Articles 35, 36, 39, 40 and 41 of the Code of Criminal Procedure deal with searches of the home of an accused person caught in flagrante delicto and with the purpose of searches, which are restricted to objects that have a bearing on the crime for which evidence is being gathered or which is under investigation (article 39). The search must take place in the presence of witnesses and the accused or his representative (article 40). If papers or letters that are sealed or closed in any other way are found in the home, they must not be opened by the criminal investigation officer (article 41 of the Code of Criminal Procedure).

260. Thus we find that the Libyan legislature has provided adequate guarantees to protect individuals, their privacy and the inviolability of their homes and correspondence, and has prohibited infringements thereof except in narrowly defined and limited circumstances and under judicial supervision. Searches and surveillance occur only on the basis of prior authorization by a legally competent authority.

261. We therefore find common ground between the provisions of Libyan legislation and those of article 17 in terms of their approach to the creation of an environment in which personal privacy and privacy of correspondence, the home and family affairs are guaranteed.

262. With regard to the remaining provision of article 17, paragraph 2, of the Covenant concerning the right of all persons to the protection of the law, we refer in this connection to previous paragraphs containing a detailed review of the right to resort to the courts and the right to compensation for damages suffered through a criminal act (article 17 of the Promotion of Freedom Act and article 60 of the Penal Code).

Article 18

The corresponding legislative provisions

263. Principle 10 of the Great Green Document on Human Rights states that:

> "The members of the society of the Jamahiriya are guided in their decisions by a divine law comprising firmly established and immutable provisions governing religious and secular life. They declare that religion means absolute faith in that which is transcendental, a sacred spiritual value which is particular to every individual and yet shared by all people and a direct relationship with the Creator, without any intermediary. The society of the Jamahiriya prohibits the monopolization and exploitation of religion for the purpose of inciting sedition, fanaticism, bias, partisanship and strife."

264. Article 5 of the Promotion of Freedom Act stipulates that:

> "Religion is a direct relationship with the Creator, without intermediary, and it is prohibited to claim a monopoly or to exploit it for any purpose."

265. Article 289 of the Penal Code prescribes a penalty of imprisonment and a fine for anyone who disrupts or impedes, by violence or threats, the holding of public religious observances or any private religious ceremony. The same penalties apply to anyone who damages, breaks, destroys or desecrates premises intended for the holding of religious observances or other objects venerated by the members of a religious community or population group.

266. Article 240 of the Penal Code prescribes the same penalties as article 289 for anyone who openly attacks a religion the observances of which are held in public.

The Libyan legislature's view of the nature of religion

267. According to the Libyan legislature (principle 10 of the Great Green Document), religion is absolute faith in that which is transcendental and a sacred spiritual value that is particular to every individual and shared by all people. It establishes a direct relationship with the Creator, without any need for an intermediary. Religion has a social function as an integral part of life in society and caters for the need for spiritual and social balance, inter alia through religious ceremonies in which the individual reaffirms the existence of a direct relationship with God.

268. As human beings are by nature sociable by virtue of the instinct that drives them to form groups and live together in a community, it follows that religion constitutes a relationship that is particular to every individual and yet shared by all people, since the individual and the group have a shared need for religion as a sacred spiritual value and a direct relationship with the Creator that combines inner belief with outward practice.

269. Monopolization or exploitation of religion for the purpose of inciting sedition, fanaticism, bias, partisanship and strife subverts the social function of religion in the life of the individual and the group. It turns religion into a weapon in the hands of a minority and makes it subject to the law of monopoly in the same way as when a minority possesses a monopoly of power and wealth. This is incompatible with the right of every individual to freedom of thought, conscience and religion and to freedom of worship, observance, practice and teaching, either individually or in community with others (article 18, paragraph 1, of the Covenant).

270. Article 5 of the Promotion of Freedom Act stipulates that:

> "Religion is a direct relationship with the Creator, without intermediary, and it is prohibited to claim a monopoly or to exploit it for any purpose."

The Libyan legislature sought, in both these provisions, to define religion and specify its social function in the life of the individual and the group. The purpose, in our view, is to ensure that everyone enjoys the right to believe in a religion and is free to manifest and practise it without being

subjected to any form of compulsion or coercion by a group that claims a monopoly of religion or exploits it for a specific purpose. We therefore feel that this is consistent with the provisions of the Covenant.

271. The legislature views religion as a need, belief, faith and practice of the individual and of the group and rejects the idea of an intermediary through which these various constituents of religion would pass. The concept of men of religion rising to the rank of "clergy" and forming part of an institution or system such as we find in Christianity or Judaism is alien to Islam. Any movement that urges the adoption of the concept of institutionalized religion is seeking to change Islam from a universal religion for all people into a religion representing a social class or stratum that would exploit it like any political force operating in society such as a party, a tribe or an elite.

272. Coming back to the relevant legislative provisions, we find that they specify the function of religion in society in the light of its fundamental characteristics and provide legal safeguards for the freedom of religious observance and the right to profess and manifest a religion. As the Libyan legislature considers that the provision of safeguards is related to the public observance and manifestation of religion, it is illegal to disrupt or impede, by violence or threats, the holding of public religious observances or any private religious ceremony. Moreover, penalties are prescribed for any act whereby premises intended for the holding of religious observances or other objects venerated by the members of a religious community or population group are damaged, broken, destroyed or desecrated (article 289 of the Penal Code). Article 290 of the Penal Code prescribes penalties for anyone who openly attacks a religion the observances of which are held in public and for the printing and publication of a book that is sacred in the eyes of the adherents of a religion in such a way as to deliberately distort and alter the meaning of its text. In fact, the Libyan legislature goes a step further by prescribing penalties for mimicry of a religious ceremony or rite in a public place with a view to ridiculing it or entertaining onlookers (article 290, paragraph 2, of the Penal Code).

273. We may say in conclusion that the Libyan legislature has guaranteed in the above-mentioned legislative provisions the right to freedom of thought, conscience and religion and the freedom of the individual to have or adopt a religion, and has provided the strongest safeguards for the public observance and manifestation of religion, which are viewed as a precondition for the protection afforded by the law to religious devotees, be they a religious community, a group of people or a sect. The fundamental principle underlying this approach is that religion is a sacred spiritual value which is an integral part of human existence and which establishes a relationship between the individual and his Creator without any intermediary or clergy.

Religious unity and pluralism in States parties

274. It is a plain and objective fact that the world consists of States with many different religions and States where there is no such diversity and a single religion predominates. In the Manual on Human Rights Reporting, the Human Rights Committee referred to what it called the dominant religion in terms of its relationship with one or more religious denominations. It may be

noted in this connection that the Libyan Arab Jamahiriya is not a country with a multiplicity of religions, sects or religious denominations. All Libyans are Muslims by birth and heredity. They are free either to practise their religion or not to practise it, since there is no coercive body (religious police) with authority to compel Libyans to perform the prayer ritual. It is a matter of personal conviction and of the need for religion as a spiritual value of vital importance to the individual, who practises it in complete freedom and in a manner compatible with public order and morals and with the safeguarding of the fundamental rights and freedoms of others (article 18, paragraph 3, of the Covenant).

275. We may conclude from the foregoing that the Libyan Arab Jamahiriya is a State in which the phenomenon of religious diversity does not exist. It is bound by the prevailing political, social and cultural circumstances and by the social and cultural relationship that exists with the social code, which is the Qur'an, and the country's religion, which is Islam. Where other religious denominations such as Christianity or Judaism exist, the legislature has guaranteed freedom of observance and made provision for safeguards in articles 289 and 290 of the Libyan Penal Code, and has prescribed penalties as a deterrent to anyone who seeks to prevent these denominations from holding their religious observances.

276. The presence of Christians, regardless of nationality, is related to employment and the State accords them the right, under the law, to manifest their religion and freedom to hold religious ceremonies in their own places of worship. The same applies to all other denominations or religious communities, be they Jewish, Buddhist, Christian or of some other persuasion, subject to the limitations mentioned in article 18, paragraph 3. The holding of religious ceremonies to manifest one's religion is subject to such limitations as are prescribed by law to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

277. Naturally, where a religious denomination exists, the State complies with the provision of article 18, paragraph 4, of the Covenant regarding the right of parents and legal guardians to teach their religion and moral values to their children.

278. In conclusion, however, we should like to emphasize that there is no religious denomination in the Libyan Arab Jamahiriya other than the dominant religion, which is Islam. All Libyans are Muslims and no part of the population whatsoever belongs to a religion other than Islam.

Article 19

The corresponding legislative provisions

279. Article 8 of the Promotion of Freedom Act stipulates that:

> "Every citizen has the right to express and publicly proclaim his opinions and ideas to the people's congresses and the information media of the Jamahiriya. No citizen shall be answerable for his exercise of this right unless he exploits it with a view to detracting from the people's authority or for personal ends."

"It is prohibited to advocate ideas or opinions clandestinely or to attempt to disseminate or impose them on others through enticement, force, intimidation or fraud."

280. Article 1 of the same Act stipulates that all citizens are free and equal in regard to their rights, which are inviolable.

281. Article 1 of the Publications Act No. 76 of 1972 stipulates that: "The press and publication are free and everyone has the right to express his opinion and to disseminate views and news by various means in accordance with the constitutional right regulated by this Act and within the framework of the principles, values and objectives of society."

282. Article 3, paragraph 4, of the same Act stipulates that: "Circulation means the sale, offering for sale or distribution of publications, the posting of publications on walls, their display in public places or any other act whereby they are made available in some way to the public."

283. Article 26 of the same Act stipulates that: "The Director of Publications or his deputy shall have the right to prohibit the distribution of any edition of any foreign publication if its content is found to be prejudicial to national or Arab unity or religious beliefs, incompatible with the principles and objectives of the Revolution or public morals, detrimental to public security or fallacious to such an extent as to confuse public opinion."

Comparison between the provisions of Libyan legislation and those of article 19 of the Covenant

284. Every citizen has the right to express and publicly proclaim his opinions and ideas and no citizen is answerable for the exercise of this right unless he exploits it for personal ends or with a view to detracting from the people's authority (a matter of public order). Article 1 of the Promotion of Freedom Act states that all citizens are free and equal in regard to their rights, which are inviolable, and the right to freely adopt and express opinions is one of the rights that the legislature has guaranteed in equal measure to all citizens. Article 8 of the same Act regulates the exercise of this right and specifies the context in which it may be exercised.

285. Everyone has the right to express his opinion and to disseminate views and news by various means in accordance with the constitutional right regulated by law and within the framework of the principles, values and objectives of society (article 1 of the Publications Act). Article 3, paragraph 4, of the same Act defines the term "circulation" as follows: "Circulation means the sale, offering for sale or distribution of publications, the posting of publications on walls, their display in public places or any other act whereby they are made available in some way to the public."

286. The exercise of these rights and freedoms carries with it a special responsibility for the individual as a result of which it may be subject to certain restrictions provided for by law, for example where it is incompatible with public order or morals or social traditions and values, or where it

impinges on the rights and freedoms of others, implies incitement to violence or bigotry, offends against morality or damages the reputation of others. In such cases, the law imposes restrictions and specifies the manner in which such restrictions may be applied (article 24 of the Publications Act and article 19, paragraph 3, of the Covenant).

287. It should be noted, however, that article 19 of the Covenant begins with an unrestricted and unlimited affirmation of rights and freedoms but proceeds in paragraph 3 to allow restrictions on condition that they are provided for by law in order to protect public order, public security or morality or to ensure respect for the rights or reputations of others.

288. In our view, the provisions of several articles of the Covenant create common ground that facilitates the coexistence of national legislation and the provisions of the Covenant in matters that could prove contentious. This common ground may be described as an area of peaceful coexistence between two legal systems that develops and takes shape as the causes of conflict are removed. It allows international law to accommodate the diversity of the real world in terms of legal and social systems, culture, religion and civilization. There is therefore a vital need for mutual interaction between the values of national and international law.

Article 20

The corresponding legislative provisions

289. Principle 16 of the Great Green Document on Human Rights stipulates that: "The society of the Jamahiriya [...] holds humanitarian standards and values sacred and aspires to a humane society without aggression, without wars, without exploitation and without terrorism, a society in which no one is considered to be great or small. All nations, peoples and ethnic groups have the right to live in freedom in the manner that they choose and have a right to exercise self-determination and establish their national identity. Minorities have a right to protection and to the protection of their heritage. Their legitimate aspirations must not be suppressed nor must force be used to merge them in one nationality or another."

290. Principle 17 of the same Document stipulates that: "The members of the society of the Jamahiriya reject any discrimination between human beings on grounds of their colour, sex, religion or culture."

291. Principle 23 of the Document states that peace among nations can bring about well-being, prosperity and concord and that the members of the society of the Jamahiriya call for the abolition of the arms trade and an end to the manufacture of arms, since it represents a squandering of the wealth of the masses and presents mankind with the spectre of mass destruction.

292. Principle 24 of the Document calls for the abolition of atomic, biological and chemical weapons and means of mass destruction and for the destruction of existing stockpiles.

293. Article 318 of the Penal Code concerning intercommunal strife stipulates that: "Any person who publicly incites to hatred or contempt of any group or groups of persons in a manner conducive to a disturbance of public order shall be punished [...]."

294. The following conclusions may be drawn from a comparison between article 20 of the Covenant and the provisions of national legislation.

295. Propaganda for war is prohibited by law. The society aspired to in principle 16 of the Great Green Document is a humane society without wars, aggression, exploitation and terrorism. All peoples, nations and nationalities have a right to self-determination in full freedom and minorities have a right to protection of their heritage and means of existence. This ideal humane world is fundamentally incompatible with any form of propaganda for war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination.

296. Discrimination among people on the basis of colour, sex, religion or culture is prohibited. This principle, which is set forth in the Great Green Document, is in keeping with the aspiration to a world community based on human fellowship, a community in which great and small, rich and poor are treated equally and without discrimination or distinction on any grounds whatsoever.

297. A world that is free from war and aggression can only be brought about through firm advocacy of a ban on the arms trade and the manufacture of arms, the destruction of existing stockpiles of nuclear weapons, a ban on the testing of such weapons and the abolition of all means of mass destruction throughout the world since they are an obstacle to peace and threaten mankind with a war of annihilation (principle 24 of the Great Green Document).

298. Article 318 of the Penal Code prescribes penalties for stirring up intercommunal strife through public incitement to hatred or contempt of any group of persons in a manner that poses a threat to communal stability and security. Article 29 of the Publications Act prohibits the publication or circulation of material conducive to sectarian conflict, the taking of revenge or the promotion of un-Islamic practices.

299. Thus, Libyan legislation is in keeping with the provisions of article 20, paragraphs 1 and 2, of the Covenant.

Article 21

The corresponding legislative provisions

300. Article 1 of the Act promulgated on 30 October 1965 stipulates that: "Individuals are entitled to assemble in a calm and peaceful manner and no police officer has the right to attend such gatherings, nor is there any need for the participants to give prior notification thereof." This is the situation with regard to gatherings held in a calm and peaceful manner.

301. The same Act permits public meetings or demonstrations within the limits of the regulations and provisions contained therein. Article 2 of the Act

stipulates that anyone wishing to organize a public meeting or demonstration must notify the local authorities in writing 48 hours before the meeting is to be held so that they will be aware of its occurrence.

302. Article 4 of the same Act stipulates that the public authorities cannot prohibit a public meeting unless it is likely to disrupt public security or public order. The prohibition order must be notified to the organizers of the meeting at their elected domicile 12 hours before the time at which the meeting is scheduled to take place.

303. Article 4 gives the persons concerned the right to lodge a protest against the prohibition order with the Minister of the Interior.

304. It may be concluded from a practical comparison between the provisions of article 21 of the Covenant and those of articles 1, 2 and 4 of the Act of 30 October 1965 concerning public gatherings and demonstrations that the right of peaceful assembly accorded under the Covenant is guaranteed in the same manner by Libyan legislation. The restrictions mentioned in article 21 of the Covenant are set forth by the Libyan legislature in article 4 of the above-mentioned Act and meetings cannot be prohibited save in the event of a threat to public security, public order, public health or public safety or in order to protect the rights and freedoms of others.

Article 22

The corresponding legislative provisions

305. Article 9 of the Promotion of Freedom Act stipulates that:

> "Citizens are free to establish and join trade unions, professional and social federations and leagues and charitable associations in order to protect their interests or achieve the legitimate objectives for which those institutions have been established."

306. Article 115 of Act No. 58 of 1970 stipulates that: "Persons working in the same occupation or industry or in similar or interlinked occupations or industries or engaged in the same type of production activity are entitled to form a trade union to enhance their productive capabilities, make them aware of their obligations, protect their interests, defend their rights and endeavour to improve their material, social and cultural situation."

307. The Trade Unions Act No. 107 of 1975 stipulates that trade unions should seek to achieve the following aims:

(i) To disseminate trade-union awareness, to raise the educational standard, occupational competence and technical standard of workers and to contribute to the social and industrial development of society.

(ii) To safeguard the legally recognized rights and freedoms of members, defend their interests and improve their terms of employment.

(iii) To raise the health, social and economic standards of members and their families through the provision of health care services, housing services and cooperative consumption facilities.

(iv) To consolidate and develop links and relations with Arab and international trade-union organizations and Federations.

Conclusions to be drawn from a comparison between the provisions of article 22 of the Covenant and the corresponding domestic legislation

308. The right to freedom of association with others, including the right to form and join trade unions to protect the interests of one's profession, federation, association or union, is a right guaranteed by law in a manner consistent with the safeguards that article 22 of the Covenant seeks to provide.

309. Trade unions are established for a variety of purposes which are enumerated in the Trade Unions Act No. 107 of 1975. They include improving the terms of employment of union members, defending their interests, raising their health, social and educational standards, etc. These are the fundamental aims pursued by those who form a trade union, an association or a federation or who join a charitable society designed to promote public welfare.

310. The legislature restricts this freedom by stipulating that associations, federations, trade unions and societies must pursue the legitimate objectives for which they were established.

311. The restrictions placed on the exercise of this right are, of course, specified in the legislation. They consist of such measures as are necessary for the protection of national security, public safety, public order, public health, public morals or the rights and freedoms of others.

312. The States parties undertake to comply with the restriction set forth in paragraph 3 of article 22 of the Covenant concerning the International Labour Organization Convention of 1948.

313. It should be noted that the freedom of citizens to establish trade unions and professional and social federations and associations in accordance with article 9 of the Promotion of Freedom Act is closely related to the freedom of citizens to choose the type of employment best suited to them, alone or in association with others, without exploiting the endeavours of others and without causing material or moral detriment to third parties. The freedom guaranteed by the legislature does not therefore consist solely in establishing or joining trade unions but also includes the freedom of individuals to choose the type of employment best suited to them, alone or in association with others.

314. The principles embodied in the right and freedom to form trade unions and associations and to choose the most suitable type of employment, in association with others or alone, are underpinned by a further important right, namely the right to enjoy the fruit of one's labour. The law

stipulates that no part of the product of a person's labour may be withheld except to the extent required to ease public burdens or in return for the provision of social services.

315. The most striking change that has occurred in the professional status of workers in the Libyan Arab Jamahiriya has been their conversion from mere hirelings into full partners in the production process.

Article 23

The corresponding legislative provisions

316. It is a sacred human right to grow up in a cohesive family with maternal, paternal and sibling relationships. Nothing is better suited to human nature than true motherhood and natural breastfeeding, since children are the product of their mother's upbringing (article 20 of the Great Green Document). 6/

317. Article 21 of the Document stipulates that: "Marriage is an equal partnership between two equal parties, neither being permitted to marry the other without his or her consent and divorce being permissible only with the concurrence of both parties or in accordance with a judgement resulting from a just court hearing. It is unjust to deprive children of their mother or to deprive a mother of her children." (Discrimination between men and women is a flagrant inequity that cannot be justified.)

318. Article 26 of the Promotion of Freedom Act stipulates that: "The right to child custody is vested in the mother, provided that she is deemed fit to undertake it. A mother must not be deprived of her children, nor must children be deprived of their mother."

319. Article 25 of the Promotion of Freedom Act stipulates that: "Every male and female citizen has the right to form a family based on a contract of marriage concluded with the consent of both parties and which cannot be dissolved without their consent or a judgement by a competent court."

320. Article 27 of the Promotion of Freedom Act stipulates that: "A woman who is granted custody of her children has the right to remain in the conjugal abode throughout the period of custody, the man being entitled to retain ownership of his personal property." "It is not permissible for a house or all or part of its contents to be taken in exchange for a divorce, whether sought by the husband or the wife, or as a consideration to be taken into account when assessing the deferred part of the marriage portion."

321. The legislative provisions that we have just quoted are taken from the following two human rights documents: the Great Green Document on Human Rights and the Promotion of Freedom Act. We have presented them as evidence of the right to marry and found a family on the basis of consent and equality. Although the legislature has given special attention to these matters in the two human rights documents, we find the origins of this legislation in Act No. 10 of 1984 regulating marriage and divorce, which provides further

confirmation of the relationship between personal rights and freedoms and their primary source, which is Islam. We offer the following as additional evidence of the foregoing.

322. Article 7 of Act No. 10 of 1984 concerning marriage and divorce stipulates that: "A guardian shall not compel a young man or a young woman to marry against his or her will, nor shall the guardian prevent his female ward from marrying the husband of her choice."

323. Consent is an essential requirement for a valid marriage contract and the guardian, who may be the father or a paternal relative, has no authority to compel either party to marry against his or her will. Moreover, the legislature has shown regard for the situation of young women by prohibiting compulsion and giving them the right to seek redress in the court responsible for marital matters, since they are usually the party under heaviest pressure from the family when authority is exercised by the father, the mother or other members.

324. Article 35 of the same Act stipulates that: "Divorce occurs by consent of both spouses and in the presence of both spouses or their specially authorized representatives."

325. In the absence of consent, either party may institute court proceedings to demand a divorce in accordance with the precepts established by law.

326. Equality and consent in the contraction of marriage and its dissolution through divorce by consent or by a court judgement are rights guaranteed by the Libyan legislature in the Act concerning marriage and divorce and protected and safeguarded by the legislation on personal rights and freedoms in the field of human rights.

327. The following conclusions may be drawn from a comparison between the provisions of the foregoing legislation and those of article 23 of the Covenant:

328. It is a sacred human right to grow up in a cohesive family with maternal, paternal and sibling relationships and this sacred right is based on the family as the primary social unit and the basis of society, with religion, patriotism and morality as its mainstay and with State protection and patronage 1/ (article 20 of the Great Green Document on Human Rights; article 23, paragraphs 1 and 2, of the Covenant).

329. Marriage is an equal partnership between two equal parties and marriage and divorce are permissible only on the basis of consent. Every male and female citizen has the right, guaranteed by law, to form a family based on a contract of marriage concluded with the consent of both parties and which cannot be dissolved without their consent or a judgement by a competent court (article 21 of the Document; article 25 of the Promotion of Freedom Act; article 23, paragraph 3, of the Covenant).

330. The equality enjoyed by the two parties during marriage based on the consent and equal status of husband and wife is extended in the event of divorce to the children. Libyan legislation provides the requisite safeguards

for this principle by stating that it is unjust to deprive a mother of her children or children of their mother. Among the provisions designed to protect children we may note that a woman granted custody of her children can remain in the conjugal abode. Moreover, the right to child custody is vested in the mother, provided that she is deemed fit to undertake it, and the family home may not be taken in exchange for a divorce or as a consideration to be taken into account when assessing the deferred part of the marriage portion (article 21 of the Great Green Document; articles 25, 26 and 27 of the Promotion of Freedom Act). Lastly, discrimination between men and women is a flagrant and unjustifiable act of injustice and article 1 of the Promotion of Freedom Act stipulates that all citizens, whether male or female, are free and equal in regard to their rights, which are inviolable.

Article 24

The corresponding legislative provisions

331. Article 20 of the Green Document stipulates that it is a sacred human right to grow up in a cohesive family with maternal, paternal and sibling relationships and that nothing is better suited to human nature than true motherhood and natural breastfeeding.

332. Article 14 of the Document stipulates that the society of the Jamahiriya guarantees care for children and mothers and protects the old and infirm. It is the guardian of those who have no guardian.

333. Article 24 of the Promotion of Freedom Act stipulates that: "Every citizen has the right to social welfare and social security. Society is the guardian of persons lacking a guardian and, as such, protects the needy, the aged, the disabled and orphans and ensures a decent livelihood for persons who are incapable of work for reasons beyond their control."

334. Articles 31, 32, 33 and 37 of Act No. 17 of 1992 regulating the situation of minors and those of equivalent status.

335. Articles 396, 398, 404 and 405 of the Penal Code (offences against family integrity; negligence in the performance of family duties; offences against the family; ill-treatment of family members).

336. Article 1 of the Nationality Act.

337. Article 4 of the Great Green Document on Human Rights (citizenship is a sacred right which cannot be forfeited or withdrawn).

338. Article 28 of the Promotion of Freedom Act (minors may not be used to perform work that is incompatible with their age and abilities).

Comparison between the provisions of Libyan legislation and those of article 24 of the Covenant

339. Protective measures are required to guarantee the sacred human right (or more specifically the child's right) to grow up in a cohesive family with maternal, paternal and sibling relationships. Under the domestic legislation

in force, the society of the Jamahiriya guarantees care for children and mothers and protects the elderly and disabled, acting on the principle that society is the guardian of those who have no guardian (articles 14 and 20 of the Great Green Document; article 24 of the Promotion of Freedom Act).

340. The Libyan legislature has taken special care to provide for and regulate the situation of minors in Act No. 17 of 1992 concerning legal guardianship, which is a legal mandate that requires the person entrusted with such responsibility to attend to all the minor's affairs. According to article 32 of the Act, legal guardianship is vested primarily in the parents and thereafter first in the close relatives on the father's side and in those next in line in terms of inheritance and kinship.

341. Under article 33 of Act No. 17 of 1992 regulating the situation of minors and those of equivalent status, the legal guardian has a duty to attend to the minor's affairs, to provide for his well-being and education and to give him a proper upbringing.

342. The judiciary intervenes to protect the minor by divesting the legal guardian of his guardianship where it is established that the parents are wholly or partly, permanently or temporarily, in one of the following situations:

(a) Where the guardian's freedom is restricted and the minor's welfare is thereby impaired;

(b) Where the guardian mistreats the minor or neglects his custodial duties, or where he sets a bad example, thereby jeopardizing the minor's safety, morals or education. Article 36 of the same Act specifies the cases in which a legal guardian must be divested of his guardianship. There are a total of 15 such cases, all related to the need to protect the minor and to ensure that his upbringing provides him with the prerequisites for his spiritual and social development and for the preservation of his health so that he can become an upright member of the family and of society.

343. Articles 396, 397, 398 and 404 of the Penal Code prescribe penalties for offences against family integrity, negligence in the performance of family duties and offences against the family. The legislature draws a distinction between offences that jeopardize family integrity through the destruction, falsification or modification of personal documents for example in order to conceal or alter the identity of the child or the presentation of fake documents in that connection, and offences against the family, which include neglect of family duties, abuse of means of discipline and childrearing, and ill-treatment of family members and children. These offences are punishable by imprisonment, a fine or detention depending on the seriousness of the criminal act. Article 29 of the Promotion of Freedom Act prohibits the use of minors, by their relatives or others, to perform work that is incompatible with their age and abilities. The legislature has, as a matter of course, ensured that the child has the right to such protection on the part of his family and the State as is required by his status as a minor, without any *discrimination* as to sex, language, religion, education, social origin, property or birth. "We all came from Adam, and Adam from dust." We have already discussed this matter in the light of existing legislative provisions,

particularly in the passages concerning articles 2 and 14 of the Covenant when we compared those articles with the provisions of domestic legislation.

344. The Civil Code stipulates that the birth of a child must be registered as soon as it occurs, initially in the maternity ward of the hospital if the birth takes place in a hospital, which is usually the case, and subsequently in the municipality where the child's family is resident. The child is given a name chosen by his or her family. (See article 30 of the Civil Code concerning registration of births and deaths and articles 31 and 38 of the Code.)

345. With regard to nationality, every live-born Libyan child has the right to Libyan nationality or, more specifically, Libyan Arab nationality which is a sacred right that cannot be forfeited or withdrawn (article 4 of the Great Green Document on Human Rights and article 1 of the Nationality Act).

346. We may therefore conclude from a comparison between article 24 of the Covenant and the corresponding Libyan legislation that the legislature has provided the child with the full protection required by his or her status as a minor, in keeping with a social policy which is designed to achieve the specific aims that are discernible from a reading of the various legislative provisions and an objective comparison with the various articles that constitute the International Covenant on Civil and Political Rights.

Article 25

The corresponding legislative provisions

347. Article 1 of the Promotion of Freedom Act stipulates that: "All citizens of the Great Jamahiriya, whether male or female, are free and equal in regard to their rights, which are inviolable."

348. "Defence of the homeland is a right and an honour of which no male or female citizen may be deprived" (article 3 of the same Act).

349. "Every citizen has the right to education, information and choice of appropriate knowledge. It is prohibited to monopolize or falsify information for any reason whatsoever" (article 23 of the same Act).

350. "Every citizen has the right to social welfare and social security. Society is the guardian of persons lacking a guardian [...]" (article 24 of the same Act).

351. "Public funds and facilities belong to society as a whole and must not be used for purposes other than those for which they are intended by the people.

352. "Public office is a service rendered to society. It must not be exploited and the authority derived therefrom must not be abused for illicit purposes" (article 33 of the same Act).

Comparison between the provisions of Libyan legislation and those of article 25 of the Covenant

353. Citizens are equal in regard to their rights and their equality stems from the fact that they are free. Moreover, their rights are inviolable and it is prohibited to discriminate among them for any reason whatsoever, be it sex, education, colour, language or religion. They are entitled to participate in the exercise of authority and in self-determination within the political framework that society has chosen for itself. The Libyan legislature has guaranteed Libyan citizens the right to hold public office provided that they meet the requisite conditions and no discrimination of any kind is tolerated in this regard (Promotion of Freedom Act, Great Green Document, Public Service Act).

354. Every citizen has the right to be a member of the people's congresses on attaining the age of 18 years and to be elected as a secretary to or a member of the people's congresses or the people's committees if he or she fulfils the requisite conditions. Article 25 (b) of the Covenant requires elections to be held by secret ballot, as a means of exercising the right recognized in the text, but we do not believe that electoral practice should be restricted in this way. Direct open-air election by the people of those responsible for implementing the decisions of the people's congresses is an alternative method of exercising the right recognized in paragraph 25 (b) of the Covenant (article 2 of the Promotion of Freedom Act) and is furthermore in keeping with the right of self-determination recognized in article 1 of the Covenant.

355. Libyan legislation guarantees access for every citizen to education, knowledge and social welfare, the right to benefit from the land by working or cultivating it, the right to choose the type of employment best suited to him and to enjoy the fruit of his labour, and the right of equal access to these services without discrimination on any grounds whatsoever. To consolidate these rights and safeguards, the rights enshrined in the Great Green Document on Human Rights and the Promotion of Freedom Act are not subject to any statute of limitations or derogation and are inalienable. The law gives all citizens the right to seek legal remedy for any violation of the rights and freedoms set forth in the two above-mentioned documents.

356. The reader is referred in this context to the discussion in the present report concerning article 2 of the Covenant.

Article 26

The corresponding legislative provisions

357. Article 1 of the Promotion of Freedom Act stipulates that Libyans are free and equal in regard to their rights, which are inviolable.

358. Article 30 of the same Act stipulates that: "Every person has the right to petition a court in accordance with the law ...."

359. Article 17 of the Great Green Document on Human Rights stipulates that: "The members of the society of the Jamahiriya reject any discrimination between human beings on the basis of colour, sex, religion or culture."

360. The right of anyone who has suffered damages to lodge a complaint and to demand justice is provided for in articles 3 and 13 of the draft Constitution.

Comparison between the provisions of Libyan legislation and those of article 26 the Covenant

361. We may draw the following conclusions.

362. There is absolute equality among citizens and it follows from this principle that the inviolability of the rights recognized by law, including the provisions of the Covenant, must be safeguarded (article 1 of the Promotion of Freedom Act). Where equality is infringed through some form of discrimination, every citizen has the right to resort to the courts in order to seek redress for any violation of such rights and freedoms as are recognized by law (article 26 of the Great Green Document on Human Rights).

363. Any discrimination on the basis of race, colour, sex, language, religion, political opinion, origin, property, birth or other status is prohibited by law and the society of the Jamahiriya, in article 17 of the Great Green Document, rejects any discrimination among individuals on the basis of colour, race, religion or culture. The prohibition of all forms of discrimination has its source in the legislation in force and its inspiration in the code of values set forth in the Covenant, which also forms part of domestic legislation except where there is conflict between the two, that is to say on a limited number of matters stemming from diversity in the areas of legislation, religion, language, culture and civilization.

364. The Libyan legislature recognizes the rights of the individual as set forth in the Great Green Document and the Promotion of Freedom Act. As we noted in the context of public order, these rights are inalienable and are not subject to any statute of limitations or derogation. The role of the People's Court in this connection consists in protecting and safeguarding the rights in question and it exercises its jurisdiction, which consists in challenging infringements, on its own initiative rather than on the basis of referral or commissioning by any other party. Article 60, paragraph 3, of the Code of Criminal Procedure guarantees the right to lodge a complaint and the right to compensation for damages suffered as the result of an offence.

365. The reader is referred to the passages in which the provisions of article 14 of the Covenant are compared with domestic legislation.

Article 27

The corresponding legislative provisions

366. Article 16 of the Great Green Document on Human Rights stipulates that: "All nations, peoples and ethnic groups have the right to live in freedom in the manner that they choose, as well as the right to exercise self-determination and establish their national identity. Minorities have a right to protection and to protection of their heritage. Their legitimate aspirations must not be suppressed or force used to merge them in one nationality or another."

367. The Libyan legislature, proceeding from the principle set forth in the Great Green Document on Human Rights, enjoins the Libyan people to strive to establish the natural national entity for their Arab nation and to assist those struggling to establish their natural national entities (article 17 of the Great Green Document).

368. The natural national entity should not be developed at the expense of other entities, however large or small. Minorities have a right to protection and to the protection of their cultural identity and heritage. Their legitimate aspirations must not be suppressed or force used to merge them in one nationality or another (article 17 of the Document).

369. By virtue of this general stance adopted by the Libyan legislature, the Libyan people undertake to support the legitimate struggle of minorities that are striving to preserve their heritage and identity in the face of nationalities in a stronger position which deny them that right.

370. The provision of article 27 of the Covenant has no practical implications inasmuch as there are no ethnic or religious minorities in the Libyan Arab Jamahiriya with separate characteristics from the majority of the population. The Libyans are Arabs by origin and descent and by language and culture, their language being Arabic and their religion Islam. They form part of the Arab nation which extends, in demographic and geographic terms, from the Ocean to the Gulf. They are not differentiated by colour, religion, language, culture or ethnic characteristics of the kind mentioned in article 27 of the Covenant (see the passage in the introduction to the report concerning the geographic and demographic features of the population of the Libyan Arab Jamahiriya and the paragraph in the body of the report concerning the right to freedom of religion).

371. In the light of the foregoing, we may draw the following two conclusions from a comparison between the articles of the International Covenant on Civil and Political Rights and the legislative enactments in force in the Jamahiriya:

(a) The numerous Libyan legislative enactments concerning human rights and freedoms in a variety of areas lay a sound basis for implementation of the provisions of the Covenant.

(b) The public-law framework for the implementation of international treaties which the Libyan Arab Jamahiriya accedes to or signs is such that every instrument, following ratification and publication, acquires the status of domestic law and is enforceable in the same way as domestic legislation.

372. A comparative study of domestic legislation and the provisions of the Covenant reaches beyond the compatibility of the two sources of law and extends to the elimination of conflict. We wish to point out in this connection that there are of course issues, which we noted in the report, that are still contentious. They constitute, in our opinion, an area for peaceful coexistence between the Covenant and domestic legislation, an area in which mutual interaction between the two systems is essential in order to narrow the gap between the particularities of the judicial and legislative systems of States parties and the recent trend towards increasing globalization of

issues, which inevitably leads to clashes with the existing geographical, political, religious, linguistic and cultural diversity of the world, which is a reality that cannot be ignored.

Conclusion

373. In conclusion, it is I hoped that the distinguished Committee will permit the expression of the view that human endeavours, on the part of individuals, groups, States, Governments, international organizations, etc., should focus on promoting the sacred values of truth, justice and freedom, upholding the rights of peoples to those values and consolidating the political, economic, social and cultural aspects of human rights in a world in which mankind must share the benefits of technological development and scientific ,rogress in such a way as to eliminate racial, cultural and religious divisions and leave no cause for allegations of intolerance, isolation or segregation between peoples and nations.

374. Throughout the history of mankind, the human person has been the cherished target of religions, divinely revealed messages and revolutionary reforms. In this world, everyone has a right to live in freedom and to think, create, produce and progress in freedom, security and peace.

375. These concepts apply to individuals as well as to nations and peoples, and those who encroach on human freedom within States and political regimes do not differ from those who encroach on the freedoms of peoples and nations by means of embargoes, isolation, external loan and debt policies, tendentious and conditional aid programmes, and the imposition of a single criterion to judge the experiences of others on the pretext that one has the best ideas and the most viable solutions to the problems of human beings everywhere, in an attempt to impose a single scale of values and a single concept of development.

376. The first category is just as much at fault as the second category, since they both act on the erroneous assumption that individuals are minors in need of someone to think and plan on their behalf and that the peoples of the world, not having reached the age of maturity, need someone to supervise every step that they take and to control even their levels of growth and development. In the same way as ignorance disappears as knowledge becomes more widespread, violations of human rights and freedoms disappear when human beings enjoy liberty and control over their destiny and when peoples take their place in decision-making forums and participate effectively in the process of shaping their future without interference from internal and external agents of coercion and subjugation.

377. Regardless of the extent of the legal and judicial safeguards that might be provided by a particular political or judicial system for the protection of human rights and freedom, there will inevitably be individual violations of the rules of law and encroachments by administrations or States on the rights and public freedoms of persons.

378. This is a basic problem in the mutual relationship between individuals and authorities. It is reflected in the ontology of modern States which manifest no inclination to justify violations of the values of freedom and human rights. In the words of Martin Luther, the religious reformer: "The just prince is a rare bird". In this sense, the concept of the ideal individual in the ideal society in the ideal State may be likened to a persistent quest for an earthly Utopia which, although human endeavours may approach it step by step, remains unattainable and beyond reach since it is part of the dream of philosophers and intellectuals. However, regardless of the magnitude of the difficulties and challenges which mankind must face in its daily life, dreams can move mountains and create part of the truth. The truth is human freedom, security and peace.

Notes

1/ Department of Statistics and Censuses, final results of the general population censuses of 1959 to 1984. National Information and Documentation Authority: results of the national family expenditure survey conducted in 1992.

2/ Article 7 of the draft Constitution stipulates that: "Citizens are free and equal in regard to their rights and obligations. Their basic rights and freedoms must not be infringed and any steps or measures incompatible therewith shall be null and void".

Article 8 of the draft Constitution further stipulates that: "Every citizen is entitled to exercise his political rights through the people's authority, without any restriction or condition, in the manner specified by law".

3/ The text of the draft Constitution is quoted as evidence of the motivated endeavours that the Libyan legislature is making to keep in step with the provisions of the human rights instruments which the Jamahiriya has signed or to which it has acceded.

4/ The Fraternal Bureaux are equivalent to embassies in Arab countries in recognition of the principle of the unity of the Arab nation and its constituent populations, since the Arabs are brothers from the standpoint of their origin and destiny.

5/ The People's Bureaux are equivalent to embassies in non-Arab countries. The term contains no element of discrimination on any grounds that could be viewed as inconsistent with the provisions of the Covenant. Compare, for example, the countries of the European Union whose unity is based on geographical, historical and cultural factors.

6/ Article 45 of the draft Constitution stipulates that: "The family is the basic unit of society with religion, patriotism and morality as its mainstay. The State guarantees the family its protection and patronage."

Article 47 of the draft Constitution stipulates that: "Children have the right to grow up in a truly maternal and paternal environment which guarantees their balanced and all-round development. The State shall act as guardian of those who have no guardian of their own."

7/ Article 45 of the draft Constitution.